

VARIANCE HEARING
BEFORE THE
CALIFORNIA AIR RESOURCES BOARD

JAMES BOYD HEARING ROOM
2020 L STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 14, 1999
3:00 P.M.

Vicki L. Ogelvie, C.S.R.
License No. 7871

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

Peter Venturini, Hearing Officer
James R. Ryden, Administrative Law Judge
Mike Scheible, Deputy Executive Officer
Dean Simeroth
Tom Jennings
Tony Brasil
Steve Brisby

Chevron:

Al Jessel
Donald E. Ferrell
M.G. Spurlock

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P R O C E E D I N G S

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HEARING OFFICER VENTURINI: Good afternoon.

To make sure everyone is in the right place, this is an emergency hearing to consider a request by Chevron for emergency variance.

My name is Peter Venturini. I am the Chief of the Stationary Source Division, at the Air Resources Board. I have been designated by the Executive Officer as the Hearing Officer for today's emergency variance hearing.

Can all of you hear me, and on the phone?

This emergency hearing is to consider a request for Chevron USA for an emergency variance from certain provisions of the California reformulated gasoline regulations.

These regulations control eight properties of gasoline sold or offered for sale in California. Please note that such a variance, if granted, would apply only to compliance with the Board's regulations and would not relieve Chevron of the need to comply with federal gasoline regulations.

Chevron's application for an emergency variance was received by ARB staff yesterday, July 13, 1999.

The notice for this emergency hearing was posted on the ARB web page on that date, and the presence there has been made known to both the ARB's fuels list server

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1 subscribers and a list of persons who have expressed their
2 desire to be notified by telephone of variance hearing.

3 This emergency variance hearing is being recorded
4 on tape and by a court reporter.

5 Since some parties are participating by telephone,
6 I am asking each hearing participant to identify themselves
7 for the record and to the other participants.

8 We will begin with Mr. Jim Ryden, Administrative
9 Law Judge, who will be my counsel, and then following with
10 the participating ARB staff, Chevron representatives, and
11 other persons who are here in the hearing room, and finally
12 all the parties who are participating by phone.

13 When we get to the parties participating by phone,
14 if you would please, in addition to your name identify your
15 organization.

16 We will start with Mr. Ryden.

17 MR. RYDEN: Okay. My name is James R. Ryden, I am
18 an Administrative Law Judge with the Air Resources Board.

19 HEARING OFFICER VENTURINI: ARB staff.

20 MR. SIMEROTH: Dean Simeroth, with the California
21 Air Resources Board, Chief of the Criteria Pollutants Branch
22 in the Stationary Source Division.

23 MR. JENNINGS: Tom Jennings, Senior Staff Counsel,
24 at the Air Resources Board and representing staff in the
25 proceeding.

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1 MR. BRASIL: Tony Brasil, Air Resources Engineer in
2 the Fuel Section.

3 MR. BRISBY: Steve Brisby, Manager of the Fuel
4 Section, Air Resources Board.

5 MR. VINCENT: Richard Vincent, ARB.

6 MR. BEDDOR: Chuck Beddor, Air Resources Board,
7 Compliance Division.

8 MIKE SCHEIBLE: Mike Scheible, Deputy Executive
9 Officer.

10 HEARING OFFICER VENTURINI: Does that cover all ARB
11 staff?

12 Let's have the Chevron representatives identify
13 themselves, please.

14 MR. JESSEL: My name is Al Jessel.

15 I am a planning consultant with the Fuels
16 Regulations Emissions Technology Group, with Chevron Products
17 Company.

18 MR. FERRELL: My name is Don Ferrell.

19 I am the Products Supply Manager for the West Coast
20 for Chevron.

21 MR. SPURLOCK: My name is Mike Spurlock.

22 I am the Optimization Manager of the Richmond
23 Refinery.

24 MR. BARR: My name is Michael Barr.

25 I am an attorney with Pillsbury, Madison, Suttro,

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1 representing Chevron today.

2 HEARING OFFICER VENTURINI: Is that all the
3 representative?

4 Okay. Why don't we go around the table and pick up
5 the other parties that are here today, starting at the end of
6 the table.

7 MR. GRATTON: John Gratton, Gratton-Galatti.

8 I represent Ultramar.

9 MR. SCHREMP: Gordon Schremp, Fuel Office of the
10 California Energy Commission.

11 MR. GLAVIANO: Tom Glaviano, Fuel Office,
12 California Energy Commission.

13 MR. WRIGLEY: Clark Wrigley, with Tosco
14 Corporation.

15 MR. ASHBY: Tony Ashby, Sierra Research.

16 MR. REA: William Rea.

17 I am here representing New West Petroleum.

18 MR. SIMPSON: Randy Simpson, New West Petroleum.

19 MR. WALKER: Chris Walker, with the California
20 Service Station and Automotive Repair Association.

21 MR. KASLER: Dale Kasler, Sacramento Bee.

22 MR. COFFEY: Jack Coffey, for Chevron.

23 HEARING OFFICER VENTURINI: Does that cover
24 everybody in the room?

25 Okay. Let's continue now with those that are on

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1 the telephone, and if you could please state your name and
2 organization.

3 MR. MOYER: Craig Moyer, representing the Western
4 Independent Refiners Association.

5 MR. DE COTA: Dennis De Cota, with the California
6 Service Station and Automotive Repair Association.

7 MR. BORENSTEIN: Steven Bornstein, with the UC
8 Energy Institute.

9 MR. SMITH: This is Steve Smith, Keith Sutton and
10 Beth Basil, with Tosco Corporation.

11 MR. SMITH: Dave Smith, from ARCO.

12 MR. ERION: Bruce Erion, with Ecoline Enterprises.

13 MR. LUENBERGER: Ernie Luenberger, from ARCO.

14 MS. DUGRAY: Sylvia Dugray, from EPA Redesign.

15 MR. FOSTIC: John Fostic, with Mobil.

16 MR. STEWART: Gray Stewart, with Mobil.

17 MR. FREEL: John Freel, with Chevron Products
18 Company.

19 MR. HACKETT: Dave Hackett, Stillwater Associates.

20 HEARING OFFICER VENTURINI: Did someone just beep
21 on?

22 MS. GREY: Gina Grey, with WSPA.

23 MR. GOULD: Curt Gould, with California Service
24 Station Automotive Repair Association and the National
25 Alliance of Chevron Marketers.

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1 MS. BRIGGS: Rochell Briggs, Los Angeles resident,
2 no affiliation with any company.

3 MS. FRANK: Lisa Frank, for -- Company.

4 MS. BROOKS: Nancy Rivera Brooks, Los Angeles
5 Times.

6 HEARING OFFICER VENTURINI: Anybody else?

7 MR. CLARK: John Clark, with Hanover Refining.

8 MR. GIVENS: Robert Givens, with Bridge.

9 MR. SAWYER: Keith Sawyer, with Bridge.

10 MR. NORTON: Chris Norton, Bloomberg.

11 MR. JOHNSTON: David Johnston with --

12 HEARING OFFICER VENTURINI: Anybody else?

13 I am sorry. Can you please repeat that?

14 We could not hear you.

15 Anyone else?

16 Last call for anybody on the phone.

17 MR. KINSEG: Russ Kinseg, Kinder-Morgan Energy.

18 MR. FARE: Rob Fare, Falcon Fuels.

19 HEARING OFFICER VENTURINI: Anyone else?

20 Okay. I assume that is everyone on the phone.

21 Is there anyone that came in the room that needs to
22 identify themselves?

23 MR. MARTIN: I am Jerry Martin, spokesman for the
24 California Air Resources Board.

25 HEARING OFFICER VENTURINI: Thank you. Sounds like

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1 someone just signed-on, on the phone.

2 Could you please identify yourself?

3 MR. WRIGHT: Sure. Bob Wright, with Methadex.

4 MR. VARENCHIK: Peter, it is Rich Varenchik, with
5 the ARB, in the El Monte office.

6 HEARING OFFICER VENTURINI: Thank you.

7 Last call for the telephone?

8 Before we begin testimony today, I would like to
9 review the process for this emergency variance hearing.

10 First, we will be swearing-in all persons who
11 intend to testify at this hearing. If you offer testimony,
12 when you do so for the first time, I would appreciate it if
13 you would confirm that you were sworn in.

14 Next, after the swearing in, I will ask staff
15 counsel to summarize what this emergency variance hearing
16 must consider and what findings must be made if an emergency
17 variance is to be granted.

18 Also, counsel will explain the type of testimony
19 that may be legally kept confidential.

20 Then I will ask Chevron's representatives to
21 present their position. I stress that it is the applicant's
22 responsibility to provide all the evidence and arguments that
23 it wants me to consider.

24 If Chevron requests that some information be kept
25 confidential, I will adjourn the hearing and with the staff

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1 hear the testimony in confidence.

2 The confidential session will be recorded.

3 However, the transcript would be presented only in a court of
4 law, in camera.

5 After Chevron's testimony, I and Mr. Ryden may ask
6 questions of Chevron. I will then ask staff if they have any
7 comments or questions.

8 Then we will provide an opportunity for other sworn
9 parties to make statements.

10 However, I want to stress that other parties may
11 not directly question the applicant. The comments should be
12 directed to me.

13 Each person who testifies should identify him or
14 herself each time he or she speaks. Testifiers may offer
15 written material for inclusion in the written record.

16 Finally, I will ask Chevron for its closing
17 remarks, and then I will ask staff for any closing remarks
18 and any recommendations.

19 Throughout the proceeding, I may ask questions of
20 the person testifying or of staff. I may direct that written
21 evidence that is not in the application be entered into the
22 record.

23 Chevron may request confidentiality of such written
24 documents, if they meet standards for such treatment.

25 I want to briefly describe my role as Hearing

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1 Officer.

2 My role in this proceeding is to preside at this
3 emergency hearing, to consider the evidence provided to the
4 record, and on the basis of that evidence, to judge whether
5 or not the criteria providing for emergency variance have
6 been met.

7 If an emergency variance is in order, I must
8 recommend its duration and the appropriate conditions to the
9 Executive Officer of the Air Resources Board.

10 Please understand that my determination will not
11 guarantee the issuance of denial of a variance. I will make
12 a recommendation to the Executive Officer, who will make the
13 final decision.

14 As Chief of the Stationary Source Division, I
15 supervise some of the staff who will participate in this
16 hearing.

17 However, my only contact with this case has been to
18 read the documents that are in the record, such as the
19 application for variance. I have not discussed this case
20 with staff, the applicant or others.

21 I will ask Chevron when it begins testimony to
22 indicate if it has any objection to my being the Hearing
23 Officer.

24 Before I conduct the swearing in, I would
25 appreciate if those that intend to give testimony, if you

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1 are, particularly, in the room, to maybe just indicate by
2 raising your hands, so I have an indication other than
3 Chevron who intends to make statements.

4 Okay. How about on the telephone?

5 MR. MOYER: This is Craig Moyer, and I intend to
6 testify.

7 MR. DE COTA: Dennis De Cota, California Service
8 Station Automotive Repair Association, I intend to testify.

9 MR. SMITH: This is Dave Smith, with ARCO.

10 I may testify.

11 HEARING OFFICER VENTURINI: In the room, we have
12 John Gratton, Ultramar.

13 CEC.

14 MR. ERION: Peter, this is Bruce Erion, and my
15 question to you is kind of along the lines of, do you want
16 anyone who may have comments to identify at that time?

17 HEARING OFFICER VENTURINI: What I'm trying to do
18 right now is get a perspective of how many people intend to
19 testify and to notify you that when we do the swearing in,
20 you should participate in that swearing in.

21 MR. Erion: You may want to swear me in. I may or
22 may not testify.

23 HEARING OFFICER VENTURINI: Maybe what we will do,
24 for those on the telephone, if you intend to testify, we will
25 swear you in at the time that you intend to testify.

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1 MR. ERION: That works for me.

2 Thank you.

3 HEARING OFFICER VENTURINI: Okay. Once again, for
4 the court reporter's benefit, you need, those of you on the
5 phone, and even around the table, need to identify yourself
6 so that the court reporter will be able to properly identify
7 you.

8 Okay. We'll proceed then with the swearing in of
9 those persons in the room wishing to testify.

10 (Thereupon the Witnesses were, by the
11 Administrative Law Judge, sworn to tell
12 the truth, the whole truth and nothing but
13 the truth.)

14 THE WITNESSES: I do.

15 HEARING OFFICER VENTURINI: Okay. Those of you on
16 the phone, when you request to testify, we will swear you in
17 at that time.

18 Now, I would like to proceed to the summary by Mr.
19 Jennings, Staff Counsel, who will review for us the
20 regulatory provisions that we must follow pertaining to
21 emergency variance and review of the definition of
22 confidential information.

23 MR. JENNINGS: Thank you, Mr. Venturini.

24 As you indicated, this variance hearing is being
25 conducted in accordance with Section 2271 of Title 13 of the

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1 California Code of Regulations.

2 This Section on variances was amended in 1996, to
3 conform with and implement SB 709, which was enacted in 1995.

4 It added Health and Safety Code Section 43013.2,
5 subsection H of Section 22, authorizes the issuance of
6 emergency variances.

7 An emergency variance can be issued without the
8 notice that is required for regular variance.

9 It is to be issued only on showing of reasonably
10 unforeseeable extraordinary hardship and good cause. An
11 emergency variance cannot extend more than 45 days.

12 It is -- the Hearing Officer is subject to
13 Subsection F on conditions and fees in granting an emergency
14 variance, with one exception or condition about requiring a
15 compliance plan.

16 The most important condition that is required is
17 that Subsection (F)(2) requires that any variance be
18 accompanied with a variance fee of fifteen cents per gallon.

19 This was expressly authorized by the 1995
20 legislation and was enacted in the regulation.

21 The objectives of the fee are generally two-fold.
22 The first is to avoid having the variance give an economic
23 advantage to the recipient of the variance compared to
24 companies who are fully complying with the regulation, and
25 the second is to assure that the variance recipient exhausts

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1 all supply alternatives for getting complying products before
2 seeking or using the variance.

3 The emergency variance is to be issued solely based
4 on substantial evidence in the record.

5 If the company cannot demonstrate that it will come
6 into compliance by the end of the emergency variance period,
7 there is a requirement for prima facie demonstration of the
8 findings of Subsection (D), which are the findings that are
9 required for a general regular variance.

10 Those findings are generally two-fold.

11 First, that for reasons beyond the reasonable
12 control of the applicant, requiring compliance would result
13 in extraordinary economic hardship; and the second is that
14 the public interest in mitigating the extraordinary hardship
15 by issuing the variance outweighs the public interest in any
16 increased emissions or air contaminants that which would
17 result from issuing the variance.

18 As I indicated, there is not a requirement that
19 there be a compliance plan.

20 HEARING OFFICER VENTURINI: Excuse me. There
21 appears to be some chatter by some of the parties on the
22 telephone that is interfering with the hearing.

23 If you are having some discussion, please put your
24 phone on mute or whatever you need to do.

25 Thank you.

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1 MR. JENNINGS: Finally, Section 2271 (B)(2)
2 pertains to the treatment of confidential information. As
3 you indicated, information that is claimed to be confidential
4 can be submitted.

5 It is subject to our regular regulations on
6 treatment of confidential matters, which provides for a
7 demonstration of the justification for confidentiality.
8 Where the material meets certain criteria, the ARB makes the
9 ultimate determination whether the material does meet the
10 criteria for confidential treatment.

11 If we determine that it doesn't qualify, we are to
12 release it after 10 days. We can be joined for doing so by
13 the court.

14 It has been practice in previous variance hearings
15 to encourage companies to only submit non confidential
16 information to the extent feasible to limit confidential
17 information so that the public is aware of the proceedings.

18 I am sure we can try to work any of these issues
19 out today.

20 That concludes my description.

21 HEARING OFFICER VENTURINI: Okay. Thank you very
22 much, Mr. Jennings.

23 At this point, I would like to give the opportunity
24 for Chevron to present their case and their information.

25 Who will be the primary representative?

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1 MR. JESSEL: I will be, Al Jessel.

2 HEARING OFFICER VENTURINI: Okay. At the outset,
3 I need you to let me know if you have any objection to my
4 serving as the Hearing Officer.

5 MR. JESSEL: We have no such objection.

6 HEARING OFFICER VENTURINI: Thank you.

7 For the record, would you just indicate that you
8 were properly sworn in?

9 MR. JESSEL: I was properly sworn in.

10 HEARING OFFICER VENTURINI: Please, proceed, Mr.
11 Jessel.

12 MR. JESSEL: Okay.

13 First of all, I want to let everyone here in the
14 room know and on the phone know that this is a particularly
15 unpleasant task for Chevron. This is not something we like
16 to do as a routine basis.

17 It is a series of events that occurred in our
18 refinery system and the marketplace that have caused us to
19 come here with fair amount of regret that we have to come
20 here and ask for a variance to sell non-complying gasoline in
21 the State of California.

22 We want to extend the apology from the President of
23 our company, Pat Works, to the people of the State of
24 California, that we are in this particular situation.

25 Having said that, we are here trying to deal with

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1 it, to try and mitigate the circumstances to the extent
2 possible and try to make amends to the people of the State
3 and to our customers.

4 The application speaks for itself. I was not
5 planning to read that into the record, unless, Mr. Hearing
6 Officer, you would like me to do that.

7 I understand it is part of the hearing record now.
8 We do not need to go into that again unless you wish to.

9 I will be asking my colleagues here, Mr. Ferrell
10 and Mr. Spurlock, to briefly go through the particulars that
11 are in the application, if that is okay with you.

12 HEARING OFFICER VENTURINI: That will be fine.

13 I don't think it is necessary to read the
14 application but to go through the major points, and I think
15 it is important that you provide for the record your
16 rationale why you believe it is necessary that you receive an
17 emergency variance.

18 MR. JESSEL: We plan to do exactly that.

19 We are requesting a variance to sell higher
20 emission gasoline in the State of California. In the
21 application, anyone who has read it understands that, we have
22 in advance agreed to the major provisions that are found in
23 Section 2271 as conditions, including fifteen cents per
24 gallon fee.

25 We also will accept other reasonable conditions

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1 that the Hearing or Executive Officer may wish to impose. We
2 will show good cause for the granting of this variance, that
3 the circumstances will produce reasonably unforeseeable
4 extraordinary hardship to Chevron, to Chevron customers,
5 primarily, and to other people in the State of California.

6 One thing that I want to add to put the application
7 in context is that this is a very, very fluid situation, as
8 the comments of my colleagues here will bring out, that
9 things are changing daily, as they do often in a situation
10 like this and in the refining and marketing industry.

11 I think we will be able to give enough evidence to
12 show that this situation is very critical, but it is changing
13 rapidly, potentially as we speak.

14 So, with that, I think I will have my colleague,
15 Mr. Spurlock, who represents the Richmond Refinery, talk a
16 little bit about the events that led up to this, and then
17 after that, Mr. Ferrell will talk about the efforts that we
18 have made to deal with the situation we have had at our
19 Richmond Refinery in the context of industry conditions and
20 what we plan to do to get ourselves out of this situation,
21 put the variance in that we are asking for into context.

22 HEARING OFFICER VENTURINI: Okay. Mr. Mike
23 Spurlock.

24 MR. SPURLOCK: I am Mike Spurlock. I have been
25 duly sworn in.

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1 Back in March, we had an event that has been
2 documented in the application here, where part of our
3 equipment was damaged, and we were operating --

4 MR. JENNINGS: Mr. Hearing Officer, I think there
5 is music playing on the telephone.

6 HEARING OFFICER VENTURINI: We are getting some
7 music coming back over the telephone.

8 If someone has a radio on, could they please turn
9 it off?

10 MR. JENNINGS: It seems to be off.

11 HEARING OFFICER VENTURINI: Please, continue, Mr.
12 Spurlock.

13 MR. SPURLOCK: Since March, we had our hydrocracked
14 event, we have been operating with curtailed gasoline
15 production capability.

16 Over this past weekend, we had a second incident
17 where we shut down a piece of equipment and had a subsequent
18 event which further reduced our production capability to the
19 point where we are now very limited in our ability to produce
20 CARB gasoline.

21 The application we submitted talks about a number
22 of 30,000 barrels a day of production, and that is the amount
23 we feel we can reliably, fairly reliably produce during the
24 time that this unit is down, given that we are unsure that we
25 can acquire enough other blending components and things that

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1 may add and enhance that capability, so that is the number we
2 are willing to fall back on at this present time.

3 The condition of the unit is that we are currently
4 in the process of cleaning that unit up. We are several days
5 away from having a complete inspection on the extent of the
6 damage.

7 It may be sometime next week before we can fully
8 assess what will be the return to on-line status.

9 What that date would actually be, an early guess,
10 based on optimism as to what we might find, indicates we
11 might have the unit back, at least in partial operating
12 condition, perhaps a month from now.

13 Again, we are at a discovery phase here where we
14 don't know the full extent of the damage, and there is some
15 uncertainty around the capacity of which we will operate say
16 a month from now, when we at least can be able return the
17 plant to partial operating condition.

18 So, probably in a week or so we will have a better
19 fix on that.

20 In the meantime, that is about the limit of what I
21 can tell you. We are in a maximum CARB gasoline production
22 mode right now, so there is little that I can see that we
23 could do at the refinery that actually would produce more at
24 this point.

25 I guess the other thing that I want to emphasize,

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1 that were against a considerable number of limitations within
2 the refinery. It's a very unusual mode that we are in.

3 There are many difficult limits, on process limits
4 and as well as logistical limits, and Don will talk about
5 some of those, that make our situation somewhat precarious as
6 far as the mode of operation that we are in, from just a
7 reliable supply standpoint.

8 We also need to make sure when we do return the
9 unit to service that we have got a good assessment of all the
10 equipment reliability issues as well as environmental issues
11 when we start the unit back up, the particular unit that was
12 damaged, the electrostatic precipitator, of course, is
13 critical to our environmental compliance, so we want to make
14 sure to get in and make a very thorough inspection of that,
15 make sure it meets all of those requirements before we move
16 forward.

17 That is about it.

18 HEARING OFFICER VENTURINI: You mentioned you
19 expected to be able to continue to produce 30,000 barrels a
20 day.

21 What kind of shortfall does that give you?

22 MR. SPURLOCK: Well, our normal production
23 capability for CARB gasoline in the summer time might be on
24 the order of 120,000 barrels a day, 110,000 barrels a day, in
25 that range.

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1 HEARING OFFICER VENTURINI: Okay. Thank you.

2 MR. JESSEL: That represents an 80,000 barrel a day
3 shortfall, and that is how we computed 3.5 million barrels
4 for the total request for the variance over a 45-day period.

5 It is as simple and neat as that. There isn't a
6 whole lot more actually to add to the side of a different
7 number.

8 The situation, as Mr. Ferrell, is going to explain,
9 is very, very fluid.

10 We do not know how we are going to be able to make
11 up that shortfall, because of the nature of the market, the
12 availability of other components, the availability of other
13 CARB gasoline, the availability of fuel that we can turn into
14 variance fuel, so, the total amount for the work here in the
15 variance is very hard to come up with a pinpoint number.

16 So, we took a very simple approach, taking our
17 normal production rate minus what we could reliably produce,
18 the difference of that, times 45 days, that is where that
19 number came from.

20 Don.

21 MR. FERRELL: My name is Don Ferrell. I have been
22 properly sworn in.

23 To add to what Mike and Al said, we had been in the
24 market purchasing the gasoline that we need to supply our
25 customers ever since the incident in March.

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1 So, the real event occurred in the middle of the
2 summer for us, last Friday, when we lost the Cat Cracker in
3 an unpartitioned way, a time when the industry had been
4 drawing down inventory, figure was 31 million barrels in APR
5 reported industry inventories at the end of May, falling to
6 the current figure before the APR report this week was around
7 27 million barrels, 26.8, I think was the number.

8 That is very low for this time of year, in high
9 demand levels.

10 The consequence of that is when we lost the
11 production, and we went to the other producers of CARB
12 gasoline in the industry to try and purchase supplies to
13 mitigate the loss, we were only able to partially replace
14 that loss.

15 In fact, the application is 300,000 barrels, and
16 still after a few days of effort in the first few weeks
17 between now and end of July, very close to that number, which
18 comparing to what we have lost is less than half of the
19 supplies that we needed, we are continuing to replace that
20 loss by a number of other measures, that includes drawing
21 down inventory, which really for Chevron was already at a
22 fairly low level, not just limiting our purchases to the area
23 but trying to find them anywhere in the State from which we
24 can deliver them in this relevant period.

25 In fact, we are proceeding to purchase the barrels

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1 in LA and trucking them up.

2 Nevertheless, when you add up all those pieces, we
3 have a high degree of confidence that we will need the
4 variance to be able to continue to supply our customers
5 between now and the early part of August, and that is the
6 key.

7 The farther out you go in time, in the 45 days,
8 the more confidence we have that we will be able to find the
9 CARB supplies. The reason for that is we have more options,
10 because the time provides us the ability to bring in farther
11 distances, which is as simple as that.

12 That is basically the story.

13 We are unable in the short term, the very short
14 term, despite all the efforts at purchases to find the
15 necessary quantities.

16 A couple of things that are worth mentioning, I
17 think there may be some concern about, and we certainly are
18 concerned about, using this variance. It is our intention to
19 use as a little of this variance as possible.

20 There are two reasons for that.

21 One is that it is our company's policy to comply
22 with environmental laws. We intend to do that, except we
23 can't. That is why we are here today.

24 The second is that the fifteen cent fee for using
25 the variance to bring in non-CARB barrels and sell them as

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1 CARB is a very onerous penalty. It is not recoverable in the
2 commodity marketplace in which I deal with.

3 As a result, it is a strong disincentive to use the
4 variance process itself.

5 HEARING OFFICER VENTURINI: Okay. Do you have
6 anything else?

7 MR. JESSEL: I might add that the compliance plan
8 as required by variance procedures, and Mr. Ferrell has
9 outlined the compliance plan now in an emergency situation,
10 the final compliance is hard to actually commit to.

11 I think that is acknowledged in the regulations.

12 We are trying to make findings in Section D. At
13 the same time, we are trying to convey as best we know what
14 our compliance plan is in hopes that a hybrid of those two
15 will suffice.

16 Our compliance plan is, as Mr. Ferrell alluded to,
17 the purchase of CARB gasoline on the open market at a later
18 time when it can actually be brought here, plus recovery of
19 the Richmond Refinery's ability to make gasoline.

20 Between those two, we are confident within the
21 45-day period, we will not need this variance.

22 HEARING OFFICER VENTURINI: I read on the
23 application that you expect to be back in full compliance
24 within 45 days?

25 MR. JESSEL: Yes, correct.

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1 That is very correct.

2 MR. FERRELL: That has two legs.

3 We are hoping, because it is really our intent to
4 continue to make products from crude oil, but in the event
5 that is not possible, within the 45 days, we have a greater
6 degree of confidence that we will be able to buy replacement
7 supplies from distant makers.

8 HEARING OFFICER VENTURINI: Okay.

9 MR. JESSEL: Just one summary comment.

10 I think between our application and what we have
11 said here today, we have shown that the incident and
12 circumstances demonstrate reasonably unforeseeable
13 extraordinary hardship, mainly -- and that is mainly related
14 to the breakdowns and physical catastrophe at the Richmond
15 Refinery, that there is good cause that the variance is
16 necessary because of impact on Chevron, and maybe more so to
17 the customers and driving public in the State of California,
18 and that they expect and demand a continuous supply of
19 gasoline, and Chevron, as being as large, if we are not able
20 to supply the 80,000 barrels a day shortfall that we now
21 project, there is going to be a severe disruption in the
22 marketplace.

23 We believe that constitutes extraordinary hardship
24 to the extent where this variance ought to be granted, and I
25 need to reiterate the point that Mr. Ferrell made that the

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1 fifteen cent per gallon fee is an enormous incentive for us
2 not to use the variance and not make higher emissions
3 gasoline.

4 That provides enough incentive, and there are other
5 incentives in our system that keep us trying to make CARB
6 gasoline before we make variance gasoline.

7 We are not sure that there is anything more that
8 could be conditioned to make us work harder to find CARB
9 gasoline than the market conditions and the variance fee that
10 we have agreed to have imposed.

11 HEARING OFFICER VENTURINI: Okay. Is there
12 anything else that you or representatives would like to add?

13 MR. JESSEL: No.

14 We are here willing to answer questions, Mr.
15 Hearing Officer.

16 HEARING OFFICER VENTURINI: I do have a few
17 questions, but I think I'm going to hold them at this point,
18 and I am going to proceed with the other comments.

19 I first would like to ask staff if they have any
20 comments on your application or any questions at this point,
21 then we will go to hearing comments from the other parties,
22 and then we will come back and give you, Chevron, the
23 opportunity for any closing comments.

24 Mr. Simeroth.

25 MR. SIMEROTH: I think I am going to start off with

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1 Mr. Jennings, Mr. Venturini.

2 MR. JENNINGS: Thank you, Dean.

3 First, as you have indicated, the application is in
4 the record. Now that you are under oath, could you affirm
5 that the content of the application is true and correct ?

6 MR. JESSEL: Yes, I will affirm.

7 MR. JENNINGS: Thank you.

8 One of the requirements for a long term variance is
9 that the inability to comply be due to reasons beyond the
10 reasonable control of the applicant.

11 One factor that it looks at in that regard is
12 whether the shutdown could have been prevented or mitigated
13 by the application of standard industrial practices, which
14 includes elements of design, methods of operation and level
15 of maintenance that reflect generally accepted practices.

16 Could you address whether Chevron has used
17 reasonably prudent activity in trying to maintain the FCC
18 units?

19 MR. SPURLOCK: I believe that that's true.

20 We are investigating the specific cause of this.
21 We do not have that yet, but this is a complete unpredicted
22 failure.

23 We would not have predicted this.

24 We have used, I think, very reliable -- reliability
25 is one of our main aspects of our operation there and very

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1 high degree of emphasis on that, and there is no reason to
2 have expected that this would occur, as far as I know.

3 MR. SIMEROTH: This is Dean Simeroth.

4 May I ask a clarifying question?

5 Electrostatic precipitator, it is sort of unusual
6 to have a gas exposure inside it, that serves without saying,
7 but in confirmation, in your case, is that true?

8 MR. SPURLOCK: Is that what actually happened?

9 MR. SIMEROTH: No, no, no.

10 The explosion inside the electrostatic precipitator
11 at the Chevron refinery in Richmond is unusual.

12 MR. SPURLOCK: Oh, yeah, absolutely.

13 I do not know that we have had such an event
14 before. This is something that I'm not even sure that this
15 has occurred within Chevron, any of the Chevron refineries.

16 MR. SIMEROTH: My understanding was that it was
17 unusual event based on the history at the Air Resources
18 Board.

19 MR. SPURLOCK: Right.

20 MR. JENNINGS: Could you tell us the extent to
21 which the refinery problems that you are having now prevent
22 Chevron from producing any gasoline as opposed to just
23 inability to produce gasoline meeting ARB standards?

24 MR. SPURLOCK: I would say that our gasoline
25 production capability, of any type of gasoline is fairly

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1 limited.

2 I haven't thought about how much more we could
3 produce if it were for some change in the standards, but
4 basically we are presently using all of our capability to
5 take the material that normally would be in the gasoline
6 boiling range that we could convert in any shape or form and
7 put them in the gasoline.

8 Some of the production is non California gasoline
9 in order to meet some of the federal requirements, but that,
10 I would say, is less than 10 percent.

11 So, we are basically there at maximum yield.

12 There could be enhanced production from the factor
13 that you are talking about, but it is not going to
14 significantly impact this situation that we are talking
15 about.

16 MR. JESSEL: Our primary goal in coming here and
17 asking for this variance is to keep our customers supplied.

18 We are focusing on the California customers, so as
19 much compliant CARB gasoline as we can make we are going to
20 make.

21 Richmond is doing that to the limit of their
22 ability at this point.

23 MR. JENNINGS: Okay.

24 MR. SIMEROTH: Mr. Venturini, I would like to ask
25 another question.

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1 One of the things, you are able to produce some
2 volume of compliant gasoline.

3 Would that be supplied to the Sacramento area which
4 is the federal RFG for Northern California?

5 If that is redundant, I apologize.

6 MR. FERRELL: Yes, I can answer that.

7 The answer is yes. We will continue to supply the
8 Federal specification gasoline to Sacramento under any
9 circumstances.

10 MR. JESSEL: Beyond that, we are planning to supply
11 CARB specification gasoline to Sacramento.

12 The first priority for that production is,
13 Sacramento area, in our application, one condition that we
14 can accept is that the variance gasoline would all be sold in
15 Northern California, outside of the Federal RFG nonattainment
16 area, and that would be the Sacramento area, and we are
17 prepared to do that.

18 MR. SIMEROTH: Okay. Again, this is clarifying,
19 and if I am saying the obvious, I apologize.

20 I am assuming that the volume that you supply to
21 Sacramento will take care of the needs that you need to
22 supply Sacramento.

23 We are not going --

24 MR. JESSEL: Richmond current volumes are enough to
25 cover Sacramento.

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1 MR. SIMEROTH: Okay. I think we had a question in
2 your application, environmental assessment --

3 MR. JESSEL: The air quality assessment, yes, we
4 did.

5 MR. SIMEROTH: We have reviewed that and generally
6 concur with the numbers.

7 They are small variations that they are explaining
8 about the options.

9 MR. JESSEL: Mr. Hearing Officer, if I may, there
10 is one inaccuracy on our application.

11 HEARING OFFICER VENTURINI: Correct that for the
12 record.

13 MR. JESSEL: Yes.

14 For the record, I want to correct that that is on
15 the excess emission in tons per day chart, which is the first
16 attachment, the middle column, under summary Delta THCevap,
17 that number in our original submission was 1.531.

18 We found an error in computation late yesterday.
19 That number really should be 1.6979.

20 Thank you for reminding me.

21 HEARING OFFICER VENTURINI: The total, addition
22 error.

23 MR. JESSEL: It was a more complicated error
24 somewhere deep in the spread sheet, but we discovered it last
25 night, and we wanted to make sure the error was corrected for

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1 the record.

2 MR. SIMEROTH: Is there any particular basin?

3 MR. JESSEL: Yes.

4 The mountain counties, as I recall, and Lake Tahoe
5 were originally smaller.

6 MR. GRATTON: Mr. Jessel, could you repeat the
7 figure?

8 MR. JESSEL: Right.

9 HEARING OFFICER VENTURINI: Would you please direct
10 any questions.

11 MR. GRATTON: I'm sorry.

12 Mr. Venturini, would you ask Mr. Jessel to repeat
13 the correct figure.

14 MR. JESSEL: I would be happy to.

15 The corrected figure is 1.6979.

16 MR. JENNINGS: Mr. Hearing Officer, I have a set of
17 maps that pretty accurately show the area of the Sacramento
18 Metropolitan Federal Reformulated Gasoline area, and I would
19 like to have those entered, to be introduced.

20 HEARING OFFICER VENTURINI: Would you like those
21 entered into the record?

22 MR. JENNINGS: Yes, I would.

23 HEARING OFFICER VENTURINI: We will call those
24 Exhibit 2.

25 The application is Exhibit 1.

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1 (Thereupon the above-referred to document was
2 admitted by the Hearing Officer as Exhibit 1 and 2
3 in Evidence.)

4 MR. JENNINGS: It would be our intent to recommend
5 as one of the conditions for the variance that it would not
6 apply for gasoline being supplied to that Sacramento
7 Metropolitan Federal Reformulated Gasoline area, and all of
8 that gasoline would be subject to California reformulated
9 gasoline regulation as well as the Federal RFG regulations.

10 HEARING OFFICER VENTURINI: Okay. My understanding
11 is that is consistent with your application, I believe?

12 MR. JESSEL: That is correct.

13 HEARING OFFICER VENTURINI: Thank you.

14 MR. JENNINGS: I would also like to ask Chevron
15 whether the variance will effect Chevron's ability to provide
16 non MTBE gasoline in the Lake Tahoe area?

17 MR. JESSEL: It will not.

18 Our plans are to continue to supply non MTBE
19 gasoline to the Lake Tahoe area, unaffected by this
20 proceeding.

21 MR. SIMEROTH: Mr. Venturini, another question,
22 assuming, I should not assume, would Chevron be willing to
23 agree as part of the variance that you would procure and use
24 complying gasoline as it is available and you can get
25 complying gasoline, you would try to get gasoline complying

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1 with Federal RFG requirements, and if you cannot get that
2 gasoline, then complying with our previously existing
3 California Phase I RFG requirements, and if you cannot get
4 that, I will stop putting limits on.

5 MR. JESSEL: Yes.

6 We can agree to that.

7 I think, as we mentioned earlier, we have a very
8 strong incentive for complying gasoline, and as much as the
9 cleanest gasoline that is available for us to use as variance
10 fuel, we will use that.

11 HEARING OFFICER VENTURINI: Mr. Jessel, building on
12 Mr. Simeroth's comment, I think what he is looking for is
13 basically the commitment to at all times to produce the
14 cleanest gas possible.

15 Beyond that, can you use the predictive model to
16 assure that you are producing the cleanest gas possible.

17 MR. JESSEL: I think it is safe to say we are using
18 the predictive model to its absolute fullest extent to keep
19 production at Richmond as high as it is.

20 HEARING OFFICER VENTURINI: Let me ask one other
21 question I have now, in case I forget.

22 In looking through your application, you indicated
23 that you wanted to cover shortfalls for the next three to
24 four weeks and to replenish inventory and 80,000 barrels a
25 day shortfall, considering four weeks, about a month, that is

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1 about 2.4 million barrels, so I had a question in my mind,
2 were you being conservative in the 3.5 million, or why the
3 discrepancy there?

4 MR. FERRELL: Again, there is the conservatism you
5 observe, if you wanted to describe it that way.

6 The way we look at it is that all the plans that we
7 have made to mitigate the loss are contingent on performance
8 by others that are beyond our control in an industry
9 environment that is shown to be unreliable this summer.

10 In fact, our observations even before the incident
11 where we needed to take actions to acquire CARB gasoline, in
12 fact, a week before the fire, we acquired cargo, which is
13 arriving in early August.

14 So, it is the concern for the inability of the
15 western refineries, not just Chevron's, to keep up with
16 demand. Our ability when August rolls around to be able to
17 buy local supplies, we have no idea about that.

18 The reason we are concerned is that now, in
19 February and March, Richmond Refinery was making 100 percent
20 of the volume we sold to our customers, and now we are
21 getting roughly one-third to one-fourth of supply to our
22 customers from our own refinery.

23 We are relying on unknown performance of other
24 refiners as product is available in the marketplace, and so,
25 we just don't know, and that is the reason for the

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1 conservative approach.

2 HEARING OFFICER VENTURINI: Is your expectation
3 then that you will probably not have to sell that market
4 volume of non spec fuel?

5 MR. FERRELL: Yes, that is a way to say it.

6 It is a very high probability, if nothing else goes
7 wrong with either us or someone else, that we use the full
8 amount.

9 In fact, as I said in my opening remarks, it is our
10 intention to use absolutely as little of the variance fuel as
11 we physically can.

12 There is a low probability that we'll use a very
13 small amount of the variance.

14 MR. JESSEL: I think it is important to recognize
15 in this thin chain of links that is now keeping our customers
16 supplied with Chevron, we are a large supplier in the State
17 of California, that any failure in the one of those links can
18 cause some severe market disruption.

19 A failure to one of those links makes it a bigger
20 one.

21 The fifteen cent per gallon penalty incentivizes us
22 in a very, very strong way not to use the variance unless we
23 absolutely have to.

24 So, the 3.5 million barrels per day (sic) limit to
25 us is an insurance policy, something that allows us to handle

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1 the worst possible situation, should it actually occur, and
2 do we expect the worst possible situation to occur?

3 No.

4 But we don't expect the most likely situation to
5 occur either.

6 So, I think the State is very well protected under
7 the circumstances, even if you should grant the variance of
8 3.5 million barrels per day (sic), we have a very strong
9 incentive not to go to that.

10 HEARING OFFICER VENTURINI: Right.

11 You mentioned 3.5 millions per day (sic). You
12 meant over the variance period?

13 MR. JESSEL: Thank you. There is a difference.

14 MR. JENNINGS: Mr. Hearing Officer, we are
15 anticipating recommending as a condition that will kind of
16 have the effect of providing the amount that can be sold
17 under variance is reduced by any amount of gasoline that they
18 can make up through other ways, and therefore, the 3.5
19 million figure would only apply if the worst case situation
20 comes to fruition.

21 Basically, we do that by reducing the amount by any
22 volume they can produce at the refinery above 30,000 barrels
23 a day and also reduce it by the amount of fully complying
24 gasoline that they are able to import into California during
25 that period, so that the variance would only cover those

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1 amounts that cannot be covered those other ways.

2 The variance would only cover those amounts that
3 cannot be covered in other ways.

4 HEARING OFFICER VENTURINI: I expect that staff
5 will probably have a set of recommendations that they would
6 like to make and will begin after hearing the other witnesses
7 and have a chance for Chevron to make closing remarks, then I
8 will hear from staff again and summarize at that point.

9 I think that is very appropriate consideration,
10 because I think one of the things that we truly like to do
11 here is to minimize and take whatever steps we can to
12 minimize the amount of non complying gasoline put into the
13 system, and I am pleased to hear that you share that goal,
14 and hopefully, you can come up with some mechanisms to assure
15 that happens as much as possible.

16 I think it would be appropriate at this point, are
17 there any other questions of staff?

18 MR. JENNINGS: A couple more questions.

19 My understanding is that you are willing to accept
20 the condition that none of the variance gasoline exceeded
21 vapor pressure of 7.8 per square inch?

22 MR. JESSEL: That's correct.

23 MR. JENNINGS: And that controls evaporative
24 emissions from motor vehicles.

25 To what extent do you think that the sulfur content

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1 of the variance fuel could be maintained at a maximum of 300
2 parts per million?

3 MR. FERRELL: I can answer that.

4 The most readily available variance fuel will be
5 the conventional gasoline that are either manufactured here
6 or imported here by us or others or the Pacific Northwest
7 Market, which is the largest conventional fuel market, and
8 that is the reason we have chosen the Portland's
9 specification for our application, and that is the basis for
10 the calculations.

11 So, within the barrels that are available, we could
12 try to aim from that source for the lowest sulfur barrels.
13 As a matter of practicality, in the relevant first four-week
14 period, there just aren't that many conventional barrels
15 either.

16 One statement I think worth making is I do not
17 think that anyone here should believe that even with the
18 variance, because of the scarcity of conventional barrels,
19 that there is any certainty that the supply will not --

20 So, what I am saying is we can try, but it is hard
21 to make it a firm condition at some level. It is going to be
22 subject to the availability, particularly in the closing
23 period.

24 MR. JESSEL: For the record, in excess of emission
25 tons per day attachment to our application are the average

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1 gasoline properties from the last three summers for the
2 Portland area, showing that sulfur did average at that time
3 period, 202 parts per million.

4 That, of course, is an average of shipment, that
5 some batches are higher and some batches are lower. Inasmuch
6 as we agree to a condition that says we won't use anything
7 higher, we limit availability to use variance fuel as a way
8 to serve our customers, I just wanted to make sure that was
9 clear to the Hearing Officer.

10 MR. FERRELL: Also again, the fifteen cent fee
11 provides us a powerful incentive providing the lowest
12 possible gasoline sulfur so that Richmond can blend into as
13 much of it as possible into CARB gasoline, typically the
14 sulfur content is what limits the ability to blend, so we are
15 out looking for low sulfur.

16 HEARING OFFICER VENTURINI: I suggest that if there
17 are any questions and you would like to testify, that you
18 hold those questions or actually comments, as I said in my
19 opening statement, there will be no questions of the
20 applicant, but if you would like to make some comments when
21 we get to the public testimony portion of this hearing, then
22 you are more than welcome to make any comments that you would
23 like.

24 MR. JENNINGS: Thank you. I do not have any more
25 questions.

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1 We are interested in the supply implications, but
2 we recognize that the representatives of the Energy
3 Commission are going to testify, and we want to hold off
4 questions until after that.

5 HEARING OFFICER VENTURINI: Mr. Simeroth.

6 MR. SIMEROTH: Mr. Venturini, no more questions.

7 HEARING OFFICER VENTURINI: Okay. With that, why
8 don't we go into hearing from others, and I think probably it
9 would be very appropriate at this point to hear from the
10 representatives of the Energy Commission.

11 MR. GLAVIANO: Tom Glaviano. I have been properly
12 sworn in.

13 I would like to make a statement that Don Ferrell
14 has made, we were looking at the availability of imports, and
15 we saw as well that the market is very, very tight through
16 July.

17 Some availability to bring in cargos that are in
18 the first of August, basically things start to loosen up
19 after August 10.

20 In our estimation, there are barrels coming out
21 here, not a lot of CARB barrels at the present time, and the
22 front end of this thing is very tight in terms of
23 availability of CARB, and cargos, there are some blend
24 stocks, other things that are becoming available, but most of
25 those have been bought or sold, and I believe those are

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1 already calculated in the marketplace.

2 Having said that, we will say that most of the
3 refinery problems we are experiencing, we have 845,000
4 barrels of production currently for statewide as of the
5 thirteenth of July, on our survey of that, most of problems,
6 refinery production is, previously we had 965,000 barrels, so
7 we are 120,000 barrels off the peak of production from last
8 week.

9 Most of those problems are in the Bay Area. I
10 cannot go into any greater detail than that but not until the
11 Chevron event, they were not spectacular in terms of the
12 events, but they were a serious concern to us that they
13 eroded the supply inventories available that today we are
14 starting on the ninth of July, inventories were roughly
15 500,000, about half million barrels below where they were on
16 March 23.

17 That is about a 21 percent reduction.

18 We see ourselves shorted by 120,000 barrels.
19 Demand's somewhere around 950 or 965, somewhere around that
20 neighborhood, and so, with incentive, we came to the same
21 type of conclusion, looking at it from a different way.

22 Seeing what was available in the beginning, we see
23 nothing. As time goes out, we see more.

24 As these refinery problems are taken care of, it
25 may allow for opportunities for others to get involved and do

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1 their creative things that refiners do to extend their
2 required gasoline components.

3 We would just say that having been in this process
4 and looked at the penalty fee or incentive program that that
5 was designed to do exactly what I heard people say today that
6 is to make a great incentive for people to go out and
7 purchase CARB gasoline to the extent possible, the fee would
8 be such an extent that it probably would cause an economical
9 disadvantage on the marketplace, which that may not be
10 recoverable, depending on all of the market conditions out
11 there.

12 We would expect that it takes some of the pressure
13 off the CARB gasoline supply and demand that we are seeing
14 today. That demand has caused prices in the last day or so
15 to go to over a dollar in the Bay and over a dollar in
16 Southern California.

17 In addition, problems outside of the state
18 exacerbated that problem as well.

19 We have problems with the Northwest in the
20 pipelines and the refineries that also have caused us to have
21 a tighter supply situation. They do effect the supplies in
22 California, because the blend stock are brought from the
23 Northwest down to here.

24 We had until just recently, until this event became
25 apparent, there was roughly a twelve-cent differential

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1 between the price of CARB gasoline in the Bay and Los
2 Angeles.

3 That price in Los Angeles was on the street level
4 was like \$1.15, \$1.20 in some places, going to \$1.45 here in
5 Sacramento.

6 Part of that reason was because there was large
7 traffic needed to bring from the Northwest to Portland which
8 have tied up transportation to such a level that there was a
9 differential greater than transportation cost between the
10 north and the south, and that has tightened up the supply
11 situation.

12 In a sense, it is a unique situation. One of the
13 promising things was that the Panama Canal situation from the
14 four-day delay to one and a half day delay has occurred, so
15 we see things hopefully starting to break in the end of the
16 week or early next week if things continue and supplies are
17 made available.

18 HEARING OFFICER VENTURINI: Would you explain -- I
19 did not get the Panama Canal issue.

20 MR. GLAVIANO: Yes, the Panama Canal closed June 9
21 through June 25 for repair work, maintenance work.

22 That caused a backlog of ships coming through the
23 canal, up to five days. That cueing, if you will, has been
24 reduced to a day and a half.

25 Even if you want something today and you have a

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1 ship out there, the best is a day and a half when you get
2 another cue report coming through. So, it is not a big
3 issue, but its just one of those things that's just another
4 little tick that adds to the tightness of the marketplace.

5 HEARING OFFICER VENTURINI: Thank you. What is
6 your estimation of when you see lessening of this tightness
7 that you mentioned earlier, barrels coming in?

8 MR. GLAVIANO: Well, we think that after the first
9 week in August, there should be a much greater flexibility
10 and availability of other products that come in.

11 A lot in the later part of August, there seems to
12 be cargos, we have talked to some of the traders, and some of
13 their cargos are coming in August 10, 15, 25, some cargos
14 that we already know about August 25 or 26, as mentioned by
15 Chevron.

16 In addition with the refinery problems, hopefully
17 they will take care of that, should be coming back up, that
18 should ease the situation as well.

19 HEARING OFFICER VENTURINI: Okay. Staff, are there
20 any questions of the CEC representatives?

21 MR. JENNINGS: Yes. You were describing the cargos
22 you were expecting to come in, in August.

23 Would that be gasoline that complies with the CARB
24 standards?

25 MR. GLAVIANO: We think there is somewhere between

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1 7.75, about 8 to 9 million barrels of gasoline coming to the
2 West Coast.

3 Most of that is conventional gasoline and most of
4 that is destined for the Northwest, as we understand it, and
5 I should say, that is the gasoline and components. A lot of
6 that, about 25 so percent of that is between now and the end
7 of July, remaining part coming in August and majority coming
8 in later part or at least after the seventh or tenth, that is
9 from our sources.

10 MR. JENNINGS: Could you briefly describe the
11 activities to be conducted that you are basing your testimony
12 on?

13 MR. GLAVIANO: What we do is we survey trading
14 routes to see what was available out there and what they were
15 doing in terms of making arrangements.

16 I cannot go into a level of detail.

17 We were looking at what is available from
18 traditional refineries to bring CARB gasoline out here,
19 Virgin Islands, in the Gulf, and we looked at what they were
20 doing, and we asked questions about that to see if we could
21 get an idea of what is coming out, what is available, what we
22 can buy or is available to be sold and has not already been
23 sold, and to get an idea where it stands before and what
24 types of gasoline is used and see if some of that can be
25 treated through getting it into a CARB spec, which could

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1 occur.

2 We will say what we are hearing is that there has
3 been a call throughout the marketplace, a lot of companies
4 are looking for sulfur, which of course would indicate that
5 there has not been any CARB gasoline or at least the blend
6 stock of that.

7 Some refineries seem to be gearing up to deliver
8 the gasoline, but again, because of the way the marketplace
9 was, that is a problem that is not perceived to be a
10 long-term problem.

11 Had everything gone okay, and this would have been
12 a non-issue.

13 So, supplies were not lined up as we thought they
14 would be. So, you are looking at two, three, four weeks out
15 before the products start in a volume, and then I think that
16 supports what Chevron is saying, after four weeks you can
17 start doing a lot more in the marketplace.

18 MR. JENNINGS: Do you see substantial supply
19 shortage prior to two, three or four weeks?

20 MR. GLAVIANO: We see a very, very tight
21 marketplace.

22 In the Bay, you are talking for Northern
23 California, you are talking 300, 330 demand, one-third of the
24 State demands, you are talking about an 8,000 barrel
25 shortfall, that is 25, 30 percent.

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1 That is significant. During the price spike of
2 April, it was roughly 15 percent for the two-week period, so
3 it could be significant.

4 MR. JENNINGS: So, you are saying this shortfall
5 would represent over 25 percent of the entire Northern
6 California market for gasoline?

7 MR. GLAVIANO: At the present time, yes.

8 MR. JENNINGS: I have no more questions.

9 MR. GLAVIANO: Making a clarifying remark that the
10 production will be above that, but as the statewide
11 production in the Los Angeles area is additionally short, and
12 so that product has to be balanced out or sent to make the
13 commitments in the south, production may, whenever they come
14 back up, may be greater than that, but the volume available
15 in the north in terms of sales is roughly 25 percent.

16 HEARING OFFICER VENTURINI: Okay. Mr. Schremp.

17 MR. SCHREMP: Thank you, Mr. Hearing Officer.

18 My name is Gordon Schremp, with the California
19 Energy Commission.

20 I would like to add, I have been properly sworn in.
21 I would like to add a couple of clarifications and some
22 additional information.

23 Mr. Glaviano just mentioned a couple of reforming
24 gasoline production figures of 965,000 barrels per day, that
25 is on the Petroleum Industry Information Recording Act data

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1 that we collect.

2 It goes into our weekly refinery stock report, 965
3 numbers for the week ending July 9.

4 The 845,000 barrel per day figure in a drop of
5 120,000 barrels per day is a result of telephone survey, to
6 answer Mr. Jennings' question, and that was a source of the
7 845,000 barrel per day figure, and that is as of yesterday.

8 As you can see, that is a dramatic decrease from
9 the 965,000 barrel per day figure.

10 The second point I would like to raise is to get a
11 bit more perspective on where our inventory levels are, Mr.
12 Glaviano did mention a reference to where we stood back in
13 March.

14 I would like to give a reference where we stood at
15 this time last year, and we are down in using figures from
16 our weekly Petroleum Refinery Stock Report, reformulated
17 gasoline inventory levels are down 16.5 percent from the same
18 time last year, and gas in blending component inventory are
19 down 21.9 percent compared to the same time last year.

20 So, as you can see, we would have to concur with
21 some of the statements made by Chevron that, yes, we are in
22 very tight supply situation with regard to both finished
23 gasoline and gas in blending components in the State of
24 California.

25 That concludes my two points.

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1 HEARING OFFICER VENTURINI: Thank you. Just so I
2 have the numbers correct, that was a 16.5 percent reduction
3 in gasoline inventories compared to last year at this time
4 and a 21.9 percent reduction in blending component
5 inventories compared to last year at this time?

6 MR. SCHREMP: Yes, that is correct, and I will
7 submit for the record in writing those figures.

8 HEARING OFFICER VENTURINI: We will make that
9 Exhibit 3.

10 (Thereupon the above-referred to document was
11 admitted by the Hearing Officer as Exhibit 3
12 in Evidence.)

13 MR. FERRELL: Does he have information on what has
14 happened to demand in the last year of consumption?

15 MR. SCHREMP: Demand, as far as we know,
16 information from our Demand Office at the California Energy
17 Commission, demand is up two percent as the same time last
18 year, at least, increase in demand, correct, for gasoline.

19 HEARING OFFICER VENTURINI: I would like to ask the
20 CEC if you concur or recommend that the emergency variance be
21 granted to Chevron?

22 MR. SCHREMP: At the current time, we are looking
23 at the first three to four weeks, we believe that this would
24 be the prudent thing to do.

25 We think there is a lot of pressure on price at the

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1 current time and that the reduction in production and supply
2 would not be able to be met at the current time.

3 HEARING OFFICER VENTURINI: Thank you. Okay.

4 Why don't we move to other individuals that would
5 like to testify.

6 I think what we will do is just go around the table
7 and see if there are other individuals that want to testify,
8 and then we will go to the individuals on the phone.

9 John, I think you wanted to testify.

10 MR. GRATTON: Certainly.

11 For the record, John Gratton, and we represent
12 Ultramar, Diamond, Shamrock, and we are here today, we
13 support Chevron's application.

14 HEARING OFFICER VENTURINI: Please indicate, in a
15 few words --

16 MR. GRATTON: Yes, I was properly sworn.

17 We support Chevron's application for emergency
18 variance, even as appropriately conditioned.

19 For the record, Ultramar, Diamond Shamrock is an
20 independent petroleum refiner. We have seven refineries in
21 the United States, and our California Wilmington refinery
22 produces about 75,000 barrels a day of CARB gasoline.

23 That is about 8.2 percent of the State's total,
24 subject to what the Energy Commission might say. In view of
25 the current situation in which we have heard about, Ultramar,

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1 Diamond, Shamrock is operating at its maximum production
2 capacity for CARB gasoline.

3 We are sending a fair amount of it north, as I
4 understand, and we are also exploring ways to make complying
5 gasoline available to California from other sources.

6 While we support the granting of the emergency
7 variance, we believe that potential for excess emissions
8 should be reduced.

9 We support the staff's recommendation regarding the
10 hierarchy of gasoline to be procured, that first CARB RFG II
11 and then federal RFG and then CARB RFG I, we support that and
12 we note that Chevron has agreed to that condition.

13 Additionally, we believe that if Chevron is to
14 import the designated fuel for the Portland, Oregon, specs,
15 that fuel should be blended with oxygenate up to the federal
16 minimum level, irrespective of where it is sold, and the
17 final position, obviously, we do not think that Chevron
18 should get a cost advantage of having to import non-complying
19 fuel.

20 We read the Section 27, 2271 (F), as granting the
21 ARB the ability to impose a variance fee of above 15 cents if
22 the market differential is greater than that, and from what I
23 hear, I guess the market differential is not, but we wish to
24 point out that we wish to say that the condition should be 15
25 cents or a difference in market prices between Northern

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1 California and Portland, Oregon, whichever one is greater.

2 We appreciate the opportunity to speak here.

3 HEARING OFFICER VENTURINI: Okay. Thank you, Mr.
4 Gratton.

5 I would just like to get a clarification from Mr.
6 Jennings at this point. It is my understanding that the fee
7 in the regulation is non discretionary, 15 cents is to be
8 imposed.

9 MR. JENNINGS: Well, at the hearing in which the
10 Board adopted these regulations, it considered the staff
11 recommendation that it be a fixed fee, and comments from some
12 but certainly not all parties that it be a variable fee, and
13 the Board adopted the fixed fee approach.

14 That being said, I would not rule out certain
15 unique conditions where, based on appropriate findings, the
16 Board Hearing Officer could impose a higher fee, but that
17 would be a unique and extraordinary situation, I think.

18 HEARING OFFICER VENTURINI: I guess for
19 clarification, my understanding is that the 15 cents has to
20 be imposed, no discretion on that.

21 MR. JENNINGS: The regulation says shall impose a
22 fee of 15 cents per gallon.

23 HEARING OFFICER VENTURINI: Okay.

24 Thank you, Mr. Gratton. Anyone else in the room
25 that wanted to make a statement?

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1 Okay. That's good.

2 Let's move to anyone on the telephone. Would you
3 please identify yourself?

4 MR. MERCANDETTI: Yes.

5 My name is Tony Mercandetti. I work as a reporter
6 for Bridge News, in New York.

7 HEARING OFFICER VENTURINI: Okay. You will please
8 restart, your name and affiliation, slowly.

9 MR. MERCANDETTI: Tony Mercandetti.

10 HEARING OFFICER VENTURINI: Can you spell that?

11 MR. MERCANDETTI: M-e-r-c-a-n-d-e-t-t-i.

12 I work for Bridge News, in New York.

13 HEARING OFFICER VENTURINI: Okay. We are going to
14 have to swear you in, if you want to make a statement.

15 We will ask Mr. Ryden to do that.

16 (Thereupon Tony Mercandetti was, by the
17 Administrative Law Judge, sworn to tell the truth,
18 the whole truth and nothing but the truth.)

19 MR. MERCANDETTI: Yes, I do.

20 HEARING OFFICER VENTURINI: Thank you.

21 Please, proceed.

22 MR. MERCANDETTI: On the 15 cent issue, I am just
23 curious, it seems that is only predicated on market
24 conditions in Portland, Oregon; is that right?

25 MR. RYDEN: Let me interject that if you are

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1 interested in offering testimony, in fact, if you have any
2 questions or wish to obtain some information or have some
3 speculative questions like that, we will direct you to our
4 press officer.

5 MR. MERCANDETTI: Well, maybe if I pose it another
6 way.

7 If there is a differential --

8 MR. RYDEN: We are not entertaining questions like
9 that.

10 We will refer you to the press office. I am sure
11 the press office can respond to any type of --

12 Mr. MERCANDETTI: I state categorically that it
13 looks as though it would be a real price advantage to bring
14 Gulf Coast conventional gasoline to the West Coast.

15 MR. RYDEN: Let me reiterate again, this is not a
16 forum for a press conference. We are here to take testimony
17 so that we can create a record.

18 MR. MERCANDETTI: How would I pose that then to
19 make it --

20 MR. RYDEN: Well, what I'm suggesting you do is,
21 we'll refer you to the press office of the Air Resources
22 Board, and they will be glad to respond with any information
23 that you need.

24 MR. MERCANDETTI: I thought this was an open public
25 hearing.

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1 HEARING OFFICER VENTURINI: Mr. Mercandetti, if you
2 would like to make a statement, we are certainly willing to
3 hear your statement, and I just want to reiterate, I'm not
4 sure if you heard Mr. Jennings, ARB staff counsel, opening
5 remarks, where he did put into context the 15 cent levy that
6 is in the regulation.

7 MR. MERCANDETTI: Yes. I heard that.

8 HEARING OFFICER VENTURINI: If you have a comment,
9 then I would appreciate it, please make your comment, and it
10 will be noted in the record.

11 MR. MERCANDETTI: Sure.

12 In my observation, there is a 50-cent-plus
13 incentive to bring Gulf Coast conventional gasoline to the
14 West Coast, and 15 cents does not address that.

15 That sums up my comment.

16 HEARING OFFICER VENTURINI: Thank you.

17 MR. DE COTA: Mr. Chairman, Dennis De Cota,
18 California Service Station and Automotive Repair Association.

19 HEARING OFFICER VENTURINI: Mr. De Cota, I would
20 like to have Mr. Ryden swear you in.

21 Please raise your right hand.

22 (Thereupon Dennis De Cota was, by the
23 Administrative Law Judge, sworn to tell the truth,
24 the whole truth and nothing but the truth.)

25 MR. DE COTA: I do.

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1 HEARING OFFICER VENTURINI: Thank you.

2 MR. DE COTA: My name is Dennis De Cota.

3 I am the Executive Director of the California
4 Service Station and Automotive Repair Association.

5 I represent about 800 retail service stations, both
6 franchises and independently owned and operated service
7 station dealer.

8 If the waiver is not approved by CARB, gas prices
9 in California, already the highest in the nation, will
10 continue to sky rocket even higher than today's record
11 wholesale prices, which right now in San Francisco stock
12 market is \$1.10 per gallon.

13 This is a limited choice, the result of years of
14 neglect in government oversight of the oil industry, the oil
15 companies have been allowed by government to shape the
16 current marketplace in such a manner that they leave CARB and
17 the Davis administration, no other alternative but to choose
18 one or the other.

19 The major oil companies strategy on consolidation
20 and shutdown of independent refiners throughout the State in
21 the past 17 years has created a situation wherein five
22 companies now control 88 percent of all refining capacity.

23 HEARING OFFICER VENTURINI: Mr. De Cota, if you do
24 not mind, I would appreciate if you would focus your comments
25 on the specific matter at hand, and that is the application

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1 before us by Chevron for an emergency variance, please.

2 MR. DE COTA: Yes, Mr. Chairman.

3 On the 15 cents, that will be implemented to
4 Chevron for not having complying gasoline, will that be
5 passed on by Chevron to the marketers, that is my first
6 question?

7 My second question is, marketers, especially
8 Chevron dealers, pay with regards to rental and other
9 financial deals on gross profit percentage, how is that going
10 to effect them?

11 Third is, they have a high degree of company
12 operated facilities, which I think a bearable fee is would be
13 much more appropriate in this situation than overall fee.

14 Over the last three or four days, gasoline prices
15 in the State of California have shot up ten cents per gallon
16 both north and south, why are all the oil companies moving in
17 unison with regard to the prices.

18 If we are loss 25 percent of our capacity as far as
19 refined products per day, and we drop from 965,000 barrels a
20 day to 845, the differential that we are hearing at 25
21 percent, would equal 241,250 barrels per day.

22 How is the California consumer going to be
23 protected with regards to the cost, and men and women that
24 own and operate these stations be able to survive the
25 situation.

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1 HEARING OFFICER VENTURINI: Okay. Yes, I'm here.

2 Mr. De Cota, you raised a few questions the purpose
3 of this is to obtain testimony. When we are done hearing all
4 of the testimony, we will give Chevron an opportunity to make
5 any closing remarks, and it will be up to them if they want to
6 provide any comments into the record with respect to some of
7 your comments.

8 You mentioned something about a variable fee, I
9 just want to reiterate the regulation is specific that the
10 fee and the 15 cents per gallon.

11 MR. DE COTA: No, I understand what you are saying,
12 but I also understand that we have the option of implementing
13 a variable fee.

14 HEARING OFFICER VENTURINI: Only to go higher.

15 MR. DE COTA: Well, maybe that is where that is
16 picked up, you know, especially paid to the company retail
17 outlet.

18 HEARING OFFICER VENTURINI: Did you have further
19 comments, Mr. De Cota?

20 MR. DE COTA: I thank you for the opportunity to
21 give testimony, and I also feel that our members are in
22 support of Chevron receiving the variance in order to stay in
23 business.

24 HEARING OFFICER VENTURINI: Okay. Well, thank you
25 very much. I appreciate you taking the time to give us the

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1 benefit of your thoughts and your comments.

2 Thank you very much.

3 MR. MOYER: Mr. Hearing Officer, Craig Moyer.

4 HEARING OFFICER VENTURINI: Yes, Mr. Moyer, we will
5 swear you in.

6 Mr. Ryden.

7 (Thereupon Craig Moyer was, by the
8 Administrative Law Judge, sworn to tell the truth,
9 the whole truth and nothing but the truth.)

10 MR. MOYER: Yes, I do.

11 HEARING OFFICER VENTURINI: Please, proceed.

12 MR. MOYER: Thank you, Mr. Venturini.

13 This is somewhat shooting from the hip here, given
14 the time and emergency nature of this proceeding, but I do
15 find it to be a pivotal day for the future air quality
16 effects of gasoline in the State of California.

17 If we are to eliminate MTBE and anticipate a
18 continuing increase in demand as what the Energy Commission
19 as indicated, two percent per year, I think upsets are going
20 to be the norm in the future, and if we are to set a
21 precedent of granting a variance today, we ought to expect to
22 do this on a fairly routine basis, because our alternatives
23 are, one, let the market operate and maintain the air quality
24 benefit, or instead pander to Chevron and create a government
25 controlled marketplace.

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1 It is that that I have some concerns about. I do
2 not believe that Chevron has met the standards set for us in
3 Section 2271, and I would urge that it is therefore beyond
4 your authority to grant a variance today.

5 MR. RYDEN: Would you care to be more specific
6 about that?

7 MR. MOYER: I plan to go into some extent.

8 First of all, I think the biggest problem is the
9 nature of the variance is set up as an emergency variance,
10 and therefore, neither Chevron nor staff has had the
11 opportunity to develop the facts necessary to assure
12 compliance with Section 2271.

13 Based upon the evidence, which has been either
14 written or documented evidence or testimony here today, there
15 is no compliance plan, nor is there any guarantee that within
16 45 days product subject to the variance will be complying.

17 One or the other of those is required under Section
18 2271, Mr. Jessel urged that you accept some type of a, I
19 believe, he referred to as a hybrid approach, and that is
20 just beyond your authority to do that.

21 So, problem number one is no compliance.

22 Problem number two is that there is simply no
23 evidence yet, but this is other than a conclusive statement
24 from the Chevron representatives that this accident, this
25 incident was beyond the reasonable control.

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1 In the history of variance hearings that this Board
2 and throughout the local level, the issue of beyond
3 reasonable control is subject to rigorous review and indeed
4 the Health and Safety Code requires extraordinary detail
5 about what is required to demonstrate that the incident is
6 beyond the reasonable control.

7 The fact that something is unusual does not mean
8 that it's beyond one reasonable control.

9 Third, another element is that 2271 requires that
10 the variance applicant contact all other suppliers, and I
11 will testify for the record that I have contacted at least
12 two clients who have indicated to me they are not aware of
13 contact from Chevron, not only in the last couple of days,
14 but in the last couple of weeks.

15 People who brought in cargos are going to get
16 adversely effected by this.

17 So, one of the conditions of 2271 (F) is that fees
18 and conditions be implemented to assure that the Chevron
19 applicant is not at a cost advantage over other persons.

20 Much has been made of the 15 cents per gallon
21 disincentive to produce, I certainly would echo the reporters
22 comments to the effect that 50-cents gallon differential and
23 west coasters versus gulf would make it clear that there is
24 substantial incentive that between buying gasoline at \$1.10
25 in the Bay Area and bringing it in some 50 cents, even

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1 attempt even 40 cents, if you call it ten cents a gallon
2 moving there.

3 Indeed, even today there is a differential between
4 testified to by Mr. Glaviano indicated that the differential
5 just between LA and San Francisco is up to 12 cents per
6 gallon.

7 So, the idea of this 15 cents per gallon fee is
8 disincentive is nonsense.

9 Finally, there is no emergency here.

10 The incident began back in March, and there is no
11 showing of a reasonably unforeseeable extraordinary hardship
12 even if the incident was somehow defined as July 9 the
13 inability to get everything back up and running, that is
14 unforeseeable, certainly not a reasonably unforeseeable
15 extraordinary hardship.

16 So, the last point, something else came up in the
17 testimony from Chevron, one of the requirements is that
18 Chevron demonstrate public interest in mitigating the
19 hardship outweighs the public interest in avoiding increased
20 emission, that is simply no evidence in that regard.

21 There are going to be increased emissions, but
22 Chevron admits and the Energy Commission testimony confirms
23 that there still may be price disruption, and indeed still
24 may be supply differential.

25 Therefore, there is no benefit to providing the

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1 variance, no benefit can be discerned when there is still a
2 potential for the adverse public interest, and indeed, the
3 point there is that there is a remedy will not necessarily
4 mitigate the public hardship.

5 So, because there still may be these price
6 disruptions, Chevron cannot demonstrate there is a public
7 interest in mitigating the hardship that outweighs the public
8 interest increase of Energy Commission.

9 That concludes my testimony, except that I do
10 sympathize with Chevron, I simply believe that this is the
11 very first gasoline variance that we have ever had in the
12 State of California, and it is not an appropriate one, and it
13 was wrong to try and call it an emergency.

14 HEARING OFFICER VENTURINI: Thank you, Mr. Moyer.

15 I'm sure in Chevron's closing remarks they will
16 probably want to address some of the points that you made to
17 get them to provide their perspective on the record.

18 Let me ask, is there other people on the telephone
19 that would like to make a statement?

20 MR. GOULD: My name is Curt Gould.

21 I'm a Chevron dealer as well as on the Board of
22 Director of the California Service Station and Automotive
23 Repair Association.

24 HEARING OFFICER VENTURINI: Before we do that, let
25 me ask, is there any others besides Mr. Gould?

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1 MR. HOLLAND: Yes. This is James Holland with
2 Kinder-Morgan.

3 HEARING OFFICER VENTURINI: Any others?

4 MR. ERION: This is Bruce Erion, with Echelon
5 Enterprises.

6 HEARING OFFICER VENTURINI: Let me just ask the
7 court reporter, if you want to take a break now -- are your
8 statements going to be very long.

9 Are you asking the court reporter if she can go
10 another 10 or 15 minutes, or do you prefer to take a break?

11 If the three of you can keep it about 10 minutes or
12 so and then we will continue, and then after we are done with
13 the testimony, we will take a break and then come back.

14 Who is first on, was it Mr. Gould?

15 MR. GOULD: I believe so.

16 HEARING OFFICER VENTURINI: Mr. Ryden will swear
17 you in.

18 Could you please state your name and your
19 affiliation, again, please.

20 MR. GOULD: Curt Gould, G-o-u-l-d.

21 I'm a Chevron dealer and also the Board of
22 Director, California Service Station and Automotive Repair
23 Association.

24 HEARING OFFICER VENTURINI: Could you also speak up
25 a little bit, please.

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1 We need you to speak up a little louder.

2 MR. GOULD: I will try and do so.

3 HEARING OFFICER VENTURINI: Thank you.

4 MR. RYDEN: Please raise your right hand.

5 (Thereupon Curt Gould was, by the
6 Administrative Law Judge, sworn to tell the truth,
7 the whole truth and nothing but the truth.)

8 MR. GOULD: Yes, I do.

9 HEARING OFFICER VENTURINI: Please, proceed, Mr.
10 Gould.

11 MR. GOULD: I support Chevron's request for the
12 variance but do ask, should a supply problem still resolve
13 something, along the lines of allocations to marketers that
14 Chevron be required to supply granted retailers at the same
15 level, at which they have supplied their company operating
16 fueling facilities, I also ask that you require to provide
17 data to prove they are doing so.

18 HEARING OFFICER VENTURINI: Okay. Could you please
19 repeat that I did not catch it all of it you went pretty
20 quick.

21 MR. GOULD: Okay. I would ask that should a supply
22 problem result, something along the lines of allocation to
23 retailers or to the marketplace, that Chevron be required to
24 supply their branded retailers at least the same level at
25 which they are supplying product to their company operated

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1 gas stations.

2 I also ask that they be required to provide data to
3 prove that they are doing so, that they are providing
4 supplies at the same level whether that be on a percentage
5 basis or on an actual volume delivery.

6 HEARING OFFICER VENTURINI: Okay. Thank you.

7 Next.

8 MR. HOLLAND: This is James Holland, from
9 Kinder-Morgan.

10 HEARING OFFICER VENTURINI: Is it James?

11 MR. HOLLAND: Yes.

12 HEARING OFFICER VENTURINI: Okay. Mr. Ryden, could
13 you please swear Mr. Holland in?

14 MR. RYDEN: Please, raise your right hand.

15 (Thereupon James Ryden was, by the
16 Administrative Law Judge, sworn to tell the truth,
17 the whole truth and nothing but the truth.)

18 MR. HOLLAND: Yes, I do.

19 I have not reviewed Chevron's application. I
20 haven't seen it, and I am not quite sure if they plan to ship
21 this variance fuel within their own distribution system or if
22 they wish to use the common carrier system, but I would just
23 like to put on record that if it does go through the common
24 carrier distribution that there will need to be some
25 enforcement discretion for the CARB parameters, wherever the

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1 fuel may end up, and that is it.

2 HEARING OFFICER VENTURINI: Okay. Thank you.

3 That is something that you can respond to in your
4 closing remarks.

5 Next.

6 MR. ERION: Yes. This is Bruce Erion, with Echelon
7 Enterprises.

8 HEARING OFFICER VENTURINI: Do you want to spell
9 it, Bruce?

10 MR. ERION: E-r-i-o-n.

11 HEARING OFFICER VENTURINI: Mr. Ryden.

12 MR. RYDEN: Please raise your right hand.

13 (Thereupon Bruce Erion was, by the
14 Administrative Law Judge, sworn to tell the truth,
15 the whole truth and nothing but the truth.)

16 MR. ERION: I do.

17 Echelon Enterprises would not oppose the variance
18 Chevron has requested, provided that the structure of the
19 variance conditions are suitably structured to protect the
20 environment.

21 One of the concerns that we have is that the 3.5
22 million barrels volume request is not gradable. One of the
23 requirements in, under the variance procedure, is that it is
24 not putting Chevron in advantage over other competitors.

25 We would like to see the various conditions that

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1 drives everyone to the behavior to protect the environment.

2 If Chevron alone has the discretion to regrade
3 conventional gasoline to CARB at any rate they wish, provided
4 that it does not exceed the 3.5 million barrels over the
5 45-day period.

6 Then other suppliers are left somewhat in a
7 quandary in trying to decide whether or not there is or is
8 not an incentive based on actions that Chevron may take that
9 they would not be aware.

10 What we would like to see is a condition that would
11 take that 3.5 million barrels and put it on a more rateable
12 basis so that the marketplace has a predictability to it, and
13 that concludes my testimony.

14 HEARING OFFICER VENTURINI: Thank you, Mr. Erion.

15 Is there anyone else on the telephone that would
16 like to testify?

17 Okay. Why don't we take, I suggest that we take a
18 15-minute break, and we will reconvene at five o'clock.

19 (Thereupon a brief recess was taken.)

20 HEARING OFFICER VENTURINI: On the record.

21 I would like to reconvene the emergency hearing.
22 There is one further individual that would like to make a
23 statement.

24 Would you introduce yourself, please, and state you
25 have been sworn in.

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1 MR. WALKER: Mr. Hearing Officer, my name is Chris
2 Walker.

3 I am speaking on behalf of the California Service
4 Station and Automotive Repair Association. I have been
5 properly sworn in.

6 The question that I have is how the Board
7 defines -- my comment is how the Board defines beyond
8 reasonable control of the applicant.

9 In future hearings, we will. The CSSA, Service
10 Station Association supports the request of Chevron at this
11 time.

12 We are concerned about how the term beyond
13 reasonable control is defined in future proceedings and would
14 like to see the Board endeavor to more clearly define what
15 that means.

16 For example, if it is in one's economic interest to
17 draw down the in-stores, and they roll the dice and all of a
18 sudden something goes wrong, should they be rewarded by
19 giving them a variance?

20 We want to know if having enough inventories should
21 be considered in their control?

22 That concludes my comment.

23 HEARING OFFICER VENTURINI: Thank you very much.

24 Okay. We have got the music again. It doesn't do
25 any good to ask the person to turn off the music since we are

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1 on hold.

2 We may have to turn the volume down. I think that
3 will still allow people to hear us, but we won't get the
4 interference if someone wants to speak, we may just have to
5 increase the volume.

6 Mr. Simeroth will have an extra chore. We can't do
7 too much about that.

8 At this point, I would like to ask representatives
9 from Chevron if they would like to make some closing
10 statements, and I would appreciate it if you have any
11 comments or reactions to some of the specific comments that
12 were made regarding your application.

13 MR. JESSEL: Yes.

14 We will make the closing statement. In the first
15 part of our opening, for the record, I found a number of the
16 comments, as I believe that the Hearing Officer did, to not
17 being particularly relevant to this proceeding.

18 We are not going to try and respond to those. We
19 will respond to those one's that are truly relevant to
20 whether a variance should be granted to Chevron, of this
21 application.

22 With that, Mr. Spurlock.

23 MR. SPURLOCK: This is Mike Spurlock. I have been
24 duly sworn in.

25 I would like to make a comment on the issue around

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1 Chevron's reliability and beyond reasonable control with
2 regard to the refinery operation.

3 Chevron is highly focused on safety and
4 reliability, this is perhaps one of our highest priorities
5 within the refining system and certainly within the Richmond
6 Refinery in particular.

7 We have engaged a lot of our people around this
8 value, and it is perhaps our paramount intent within the
9 refining department.

10 We have data which indicates a downward trend of
11 incident frequency over the last several years as a result of
12 our efforts and focus in this area.

13 The fact that we had two major incidents in the
14 same year is a statistical anomaly. We have not fully
15 investigated the cause of the most recent incident, but it
16 would appear that they are unrelated, the two major incidents
17 that we have had.

18 In addition, this is the type of thing that could
19 have been anticipated.

20 It's a result of what appears to be a highly
21 unusual combination of factors. It is not the type of thing
22 that would be addressed in our standard industry practices
23 nor Chevron's reliability and safety practices.

24 Although, certainly we will learn from these and
25 change our practices and address these things.

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1 So, I guess in summary, we do not believe that
2 these are the type of failures we have ever had before and
3 that reasonable activities would not have prevented, and
4 there was no reason to expect either of these would have
5 occurred.

6 MR. FERRELL: Now, following, I have comments on
7 three topics.

8 My name is Don Ferrell. I have been properly sworn
9 in.

10 The first was to the comment by the Kinder-Morgan
11 representative, James Holland. We have already contacted
12 operations people at Kinder-Morgan.

13 We recognize as the common carrier there are things
14 they need to take care of, and so, in the event of the
15 variance, we have began discussions with them today, and I
16 hope to be able to continue to use their system, as we do
17 currently, in addition to our own priority systems.

18 The second point has to do with some comments about
19 gasoline being cheaper in the Gulf of Mexico, perhaps
20 substantially cheaper than the 15 cent per gallon fee.

21 I don't know what the price of gasoline in the Gulf
22 is today, but order of magnitude, that is certainly true, the
23 difficulty is that gasoline available in the Gulf today
24 cannot be on the West Coast in the three- to four-week
25 relevant period.

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1 In fact, it could barely arrive here if we were to
2 begin actually today in the 45-day period. That is point
3 one.

4 Second is --

5 HEARING OFFICER VENTURINI: Would you restate that,
6 please?

7 I did not catch it.

8 MR. FERRELL: Well, the price of gasoline is only
9 relevant in the Gulf to the extent that you can get it to the
10 West Coast, and it takes a long time.

11 So, it is not available to help us mitigate this
12 supply difficulty in the last three weeks of July and the
13 early part of August, and this is consistent with the
14 California Energy Commission's testimony as well.

15 The second point was regarding the Gulf of Mexico
16 gasoline, and I think more important, perhaps relative to the
17 15 cents, is that CARB gasoline and CARB components are also
18 available in the Gulf at prices commensurately low relative
19 to the West, and certainly the 15 cents gives us a powerful
20 incentive to purchase those components.

21 So, there would be no economical benefit to Chevron
22 in purchasing conventional gasoline from the Gulf to bring
23 them here.

24 Our first priority would be, as we have indicated
25 in our testimony, to bring out CARB gasoline, and that is

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1 consistent with the economic incentive fee price.

2 The third point goes to the topic of economic
3 hardship. I think we made this point, but I think it is
4 worth repeating, perhaps a little more explicitly, our
5 concern of the economic hardship is supplying our customers
6 in California.

7 We have contacted all of the manufacturers of CARB
8 gasoline, and many of them are in this room or on the call at
9 the highest management as well as the supply, trading level,
10 and we are satisfied that we have purchased all the barrels
11 available to purchase for delivery in this three-to four-week
12 period.

13 HEARING OFFICER VENTURINI: You said you have
14 contacted all of the manufacturers?

15 MR. FERRELL: All of the manufacturers and to all
16 of, to our knowledge, all of the traders who we have
17 purchased barrels from in the past.

18 That is a pretty extensive list. We are confident
19 that the barrels that are out there we have found and
20 purchased them.

21 So, our certain as to the hardship is we are
22 concerned that if we cannot satisfy the needs of our dealers
23 and customers, then they will have to turn to someone else as
24 the testimony of our Chevron dealer indicated, and just like
25 us, we think when they turn to look for alternates, they will

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1 not exist either.

2 That is consistent, again, with the testimony of
3 the CEC. There is no place to turn.

4 So, the purpose for this is to provide that
5 alternative.

6 In fact, if you look at the standard in the
7 regulations, we believe that the consequences in the
8 marketplace as to customer confidence and the quality
9 benefits for the air and the availability and the cost of
10 CARB gasoline, it is a potential impact on price, because the
11 market takes care of that.

12 We believe that meets the requirements in the
13 regulations for providing the overall benefit to the public
14 interest. I think that is crucial.

15 Finally, I think I have talked earlier, there is no
16 guarantee with the variance, but I will say, with the
17 variance, the risk of a supply shortfall is substantially
18 mitigated.

19 We have an alternative that is not currently
20 available.

21 Those are the three points.

22 MR. JESSEL: Most of the points that we needed to
23 respond have been made.

24 I will go on and deal with a few others.

25 I would like to preference my comments with the

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1 thought that coming here for a variance and receiving a
2 variance, we do not consider to be a reward unless some
3 strange manipulation of logic the privilege of paying 15
4 cents per gallon off our bottom line it ends up being a
5 reward.

6 This is something that we need to do to protect our
7 customers. We need to protect our dealers, some of which are
8 here present in this hearing, and mitigate, as Mr. Ferrell
9 said, the serious problem that can result from a significant
10 shortfall of gasoline to consumers in California.

11 As far as the emissions shortfall goes, I think the
12 worst thing that could possibly happen in the current
13 situation harkens back to some of the events that have
14 happened in the past.

15 I remember a very full Board hearing in early 1996
16 where price rises and market disruptions caused what I
17 perceived to believe a serious threat to the CARB regulation
18 as a whole.

19 We believe that getting variance is not a reward.
20 It is, in fact, it would be irresponsible for a company as
21 large as Chevron, facing the problem the size that we are
22 facing, to not come and take advantage of the safety valve
23 that the Air Resources Board intentionally placed into the
24 regulations to deal with these situations.

25 So, we would not be here unless we had a great deal

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1 at stake. I think the State should see that the State has a
2 great deal at stake, not only in terms of supplying its
3 customers, but preserving the regulations that actually
4 assure the air quality, the benefits of cleaner burning
5 gasoline.

6 I want to say that Chevron, since 1996, it has been
7 a very, very reliable producer and supplier of the gasoline
8 during the most critical times. Since the introduction of
9 the California gasoline in 1996, we produced great quantities
10 of California gasoline very, very reliably on spec and on
11 time.

12 I say that just to put into perspective the kind of
13 incident that we are seeing now in Richmond is extremely
14 unusual, and we were very, very proud of the record that we
15 had in supplying California with cleaner burning gasoline,
16 and that is why it is so devastating to us to see what is
17 happening at our Richmond Refinery.

18 On to some of the specific points, I heard several
19 comments that the Air Resources Board should see to it that
20 Chevron treats its customers fairly, inasmuch as that is an
21 issue for this proceeding, but I'm not sure it really is, let
22 me state for the record that Chevron does treat all of its
23 customers fairly across the board.

24 It will not discriminate against any trading class.

25 The whole issue of good cause, I believe, is

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1 primarily addressed by what Mr. Ferrell said.

2 The fact that without adequate gasoline for
3 California consumers, that not only the inconvenience but the
4 regulations themselves come under threat, I want to make sure
5 and link that thought to the need to make the finding of good
6 cause.

7 The reasonably, unforeseeable, extraordinary
8 hardship, clearly extraordinary hardship would be to
9 California consumers if indeed there was market disruption,
10 they could not get the gasoline supplies that they are
11 accustomed to get.

12 If you consider emergency services, for instance,
13 having trouble getting gasoline, then clearly that would be
14 extraordinary hardship.

15 The fact that it was unforeseeable, I think, has
16 been summed up well by Mr. Spurlock, in terms of the fact
17 that we had accidents at our Richmond Refinery that had we
18 had any ability to prevent it, we certainly would have
19 prevented it.

20 There is absolutely no incentive for a company like
21 Chevron to do anything other than to prevent the kind of
22 incident that we had.

23 We have heard some mention of conditions that
24 should be placed, one of them dealt with the 15 cent per
25 gallon variance fee, I am going to let Mr. Barr speak for

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1 just a minute to what we believe is the discretion that the
2 Executive Officer has in changing that 15 cent per gallon
3 fee.

4 MR. BARR: My name is Michael Barr, and I have been
5 properly sworn.

6 Our position is that the regulation is very clear
7 and does not authorize a departure one way or another from
8 the 15 cent per gallon fee.

9 The emergency variance regulation refers very
10 specifically and explicitly to the conditions in Section 2272
11 (F), which has two parts. The first part is conditions that
12 deal very specifically with subjects other than fees, such as
13 RVP, such as subsequent transaction protection of the type
14 that the gentleman from Kinder-Morgan mentioned, and that in
15 the fee provision of the regulation it is very specific, very
16 clear and does not provide for Executive Officer's authority
17 to depart from that.

18 Therefore, we think that any requests for greater
19 or different fees can only be directed to the Board.

20 In any event, we also believe that no witness has
21 offered any facts showing any unique or highly unusual
22 circumstances that would justify departing from the fixed fee
23 that the Board adopted.

24 The Board has not provided any guidelines as
25 required by statute for the imposition of fees that are

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1 different from 15 percent, either higher or lower. We have
2 no way, and we submit that ARB and the Hearing Officer and
3 Executive Officer have no way of evaluating the fairness or
4 equitability of any suggestions made by any particular
5 witnesses here today to change the fee in any way.

6 If the ARB wishes to consider variable fees, it
7 must develop the guidelines for Chevron and across the board
8 and delay the request for variance by one minute for the
9 development of a set of fee guidelines, that is not an
10 exercise that is required by the rules of the statute.

11 Thank you.

12 HEARING OFFICER VENTURINI: Anything else?

13 MR. JESSEL: Yes.

14 On the suggestion that the 3.5 million barrels in
15 the 45-day period is inappropriate, again, we have no way of
16 making that kind of goal rateable, as one commentator
17 requested.

18 As I think I pointed out in our opening comments
19 that this situation is very fluid and unpredictable, because
20 it is fluid and unpredictable, there is no way we could know
21 in advance how much variance fuel we would need to blend over
22 the next 45-day period, so we do not see any way to actually
23 make it rateable.

24 I think we have already put on the record the
25 method by which we came up with the 3.5 million barrels over

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1 the 45-day period.

2 But coupled with this, I don't believe that kind of
3 limit is any particular threat to the State, because once
4 again, the 15 cent per gallon variance fee is a tremendous
5 incentive for us not to make variance fuel at all, not to
6 mention the fact that we very much would like to use our own
7 capital resources that are in the refinery to make gasoline,
8 so I think there is very little danger at stake that this
9 could in any way be over used.

10 I suggest that the Hearing Officer think back to
11 1993, when a number of diesel variances were granted during
12 the introduction of the new diesel.

13 At that time, which Chevron is very experienced and
14 has a good memory of what went on then, and we found the
15 variance fee at that time, which was quite a bit smaller, to
16 be enough of an incentive to prevent making more variance
17 fuel than is absolutely necessary.

18 HEARING OFFICER VENTURINI: The Hearing Officer had
19 experience with that as well.

20 MR. JESSEL: As I recall.

21 As far as the compliance plan goes, we actually
22 think we have made the case for both of the cases that are
23 possible here in establishing the compliance plan for
24 emergency variance.

25 I believe we have satisfied the findings that are

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1 necessary under Section D, that is beyond the reasonable
2 control of the applicant requiring compliance, when you look
3 at the section, you will result in extraordinary economic
4 hardship, and again, we focus on the end user.

5 There are hardships to, obviously, to Chevron, but
6 I think the end users will be closely in mind today, that the
7 public interest in mitigating the hardship by issuing the
8 variance outweighs the public interest in avoiding any
9 increased emissions of air contaminants, and I point to the
10 basic threat to CARB's rules if there were to be a blanket
11 suspension as a much, much greater threat to air quality than
12 anything we are planning to do.

13 The compliance plan composed by the applicant can
14 be reasonably implemented, will achieve compliance
15 expeditiously as possible.

16 I think we heard from the Energy Commission,
17 corroboration of what we know, and that is that supplies from
18 CARB gasoline will begin to be flowing in August in
19 sufficient quantity so that the market can be supplied.

20 We fully intend to get our Richmond Refinery
21 operating to as close as normal as safe as we can to
22 supplement all that, but we are convinced at the end of this
23 45-day period that there will be ample supplies, whether we
24 have our cracker running or not.

25 Turning to conditions, I guess it is up to the

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1 Hearing Officer. Would you like us to respond to some of the
2 conditions staff has mentioned, or will there be further
3 discussion?

4 HEARING OFFICER VENTURINI: What I would like to
5 suggest is after you complete, I will ask staff to do their
6 wrap up, and then they have mentioned some recommendations
7 and they have other recommendations, so I would ask them to
8 layout those recommendations, and then if you had any
9 comments regarding those, we will take those at that time.

10 MR. JESSEL: Okay. Thank you.

11 MR. BEDDOR: Mr. Hearing Officer, I am Chuck
12 Beddor, with the Air Resources Board.

13 I would just add, any consideration of granting
14 things that any conditions of variance in terms of
15 enforceability be placed at the maximum in terms of limits
16 and then be placed on the parameters of gasoline in terms of
17 areas where the gasoline be sold, which we have already
18 discussed in terms of batch by batch reporting.

19 I recognize the difficulty of shipping it by common
20 carrier, but in the interest of protecting the industry and
21 keeping the level playing field, we would like to ensure that
22 any condition be as enforceable as possible.

23 HEARING OFFICER VENTURINI: Thank you.

24 Mr. Jessel, is that it for now?

25 MR. JESSEL: Yes.

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1 I'm assuming we will get a chance to respond to
2 conditions and discussion with staff.

3 HEARING OFFICER VENTURINI: Yes.

4 Do you have any comments on the recommendation?

5 Why don't we turn to staff at this point, and any
6 closing remarks or comments and the recommendations.

7 MR. SIMEROTH: Mr. Venturini, I will make it brief,
8 and then Tom Jennings will give a more thorough discussion.

9 It appears to us, we support the issuance of the
10 variance with the conditions to be discussed. That is as
11 simple as I can make it.

12 Mr. Venturini, I apologize. I would like to
13 backup. In terms of the conditions, we have received a
14 facsimile from the Bay Area Air Quality Management District
15 that has asked to be entered into the record.

16 Do we have copies available?

17 HEARING OFFICER VENTURINI: That will be Exhibit 4.

18 (Thereupon the above-referred to document was
19 admitted by the Hearing Officer as Exhibit 4
20 in Evidence.)

21 MR. SIMEROTH: The fax involves their
22 recommendations for what they think would be appropriate
23 variance conditions.

24 HEARING OFFICER VENTURINI: Has that been provided
25 to the applicant and others?

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1 MR. SIMEROTH: It has been provided to the
2 applicant, and we have copies available for anyone else who
3 would like copy at this point.

4 MR. JESSEL: We have received a copy, with not a
5 whole lot of time to look at it, but we would like to make a
6 few comments at the appropriate time.

7 HEARING OFFICER VENTURINI: I suggest we wait until
8 the staff completes their recommendation, and then we will
9 get your input.

10 Mr. Jennings.

11 MR. JENNINGS: If it is not out of order, Mr.
12 Hearing Officer, I wonder whether it would be worth while for
13 the Energy Commission representatives to make any comments
14 they want to on the cost of gasoline on the Gulf Coast and
15 the relationship between the cost and the availability there
16 and the cost and availability in California.

17 HEARING OFFICER VENTURINI: I think that is an
18 excellent suggestion, Mr. Jennings, and we welcome some
19 additional input on that.

20 MR. SCHREMP: My name is Gordon Schremp, with the
21 California Energy Commission.

22 I will respond to that question. I concur with the
23 comments made by the Chevron representative that it is a
24 matter of time for which Chevron is talking about, they are
25 trying to get available supplies of gasoline into the

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1 California market in near term is from this day over the next
2 three weeks.

3 In the outer periods of time, we do see more
4 complying gasoline coming into California, or at least being
5 able to be delivered to California from outside of the state.
6 We also agree with Chevron representatives that, yes, to be
7 able to get gasoline from the U.S. Gulf Coast, find a ship, a
8 U.S. tanker, load that vessel, bring it around to California,
9 it cannot be accomplished in a week, two weeks, or three
10 weeks.

11 It is likely to be longer than that period of time.

12 Therefore, it does not fit the criteria of
13 available supply to meet our needs immediately over the next
14 one to three weeks.

15 HEARING OFFICER VENTURINI: Okay. It is also my
16 understanding that if fuel is to come from the Gulf Coast
17 that the likelihood is that that would be complying fuel
18 being brought in, so to the extent that fuel comes in from
19 the Gulf Coast, it is likely to be complying fuel.

20 Is that what you are --

21 MR. SCHREMP: I believe to answer your question,
22 Mr. Hearing Officer, since it is going to take time to bring
23 fuel in, you can certainly arrange that the cargo of
24 complying gasoline come in in four to five weeks out and you
25 have to pay a variance fee of 15 cents per gallon.

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1 HEARING OFFICER VENTURINI: Let me just ask Chevron
2 representatives, is that consistent?

3 MR. SPURLOCK: Yes.

4 MR. JESSEL: Yes.

5 MR. FERRELL: Yes.

6 HEARING OFFICER VENTURINI: Thank you very much.
7 That is very helpful.

8 MR. JENNINGS: As far as you know, is there federal
9 RFG available on the Gulf Coast?

10 MR. SCHREMP: As far as I know, federal
11 reformulated gasoline is produced in the United States Gulf
12 Coast as well as the Virgin Islands facilities in the
13 Caribbean.

14 Yes, that material is available there.

15 MR. GLAVIANO: Just a caution though, that markets
16 are normally in balance, refineries produce gasoline from the
17 region, if anybody who is producing 80,000 barrels additional
18 federal RFG right now, in case of an emergency in California,
19 that I would suspect they would not be in charge of that
20 operation for a long period of time.

21 So, what you have is a case where their markets are
22 in balance, and normally they can produce more depending on
23 the, upon the blending, it is the luck of the draw in terms
24 of some of the crude oils that are being used to running a
25 stream of low sulfur crude oil, that some things can be done

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1 relatively in a hurry, but normally that still takes time to
2 put that together.

3 So, if you are going to put together federal RFG as
4 well, those are made up of component parts, outlets, gasoline
5 stream run, etcetera, that you might as well get the outlets,
6 get the other crops, bring in the other, because you are
7 still paying the transportation costs as well.

8 I think one of the things we have to mention here,
9 even if it is a 50-cent differential this time, you still have
10 about a 10 cent transportation cost on top of the 15, to get
11 it here, with the premium, I would suggest you would like to
12 have some kind of hedge on making the effort to have the
13 gasoline available for California.

14 So, you know it is refunctionable, in terms of once
15 we get the product here in time and distance and ability of
16 catching the refinery with the right blends, and if they can
17 blend it to make gasoline, conventional style, they can learn
18 to make CARB gasoline or give to people to make the CARB
19 gasoline.

20 HEARING OFFICER VENTURINI: Thank you.

21 Mr. Jennings or Simeroth.

22 MR. JENNINGS: Well, I will make a few comments.

23 I think that staff would recommend the granting of
24 the variance. We believe that Chevron has established that
25 an extraordinary hardship would exist if a variance was not

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1 granted.

2 The fact that there would be about a 25 percent
3 shortfall in the gasoline available in Northern California is
4 pretty strong evidence that there would be extraordinary
5 hardship.

6 We are persuaded that Chevron took the kind of
7 precautions that are appropriate of a recently prudent
8 refiner to try and avoid the situation.

9 We are persuaded that Chevron has made and even
10 more importantly will continue to make many, many efforts and
11 strong efforts to obtain complying California reformulated
12 gasoline both in the State and from other suppliers outside
13 the State.

14 I think we are going to recommend, we are aware
15 that there would be a significant emissions increase, and we
16 are concerned about that. That has to be balanced, however,
17 against the public interest in granting the variance, and
18 given the level of shortfall that we are talking about for
19 Northern California, we think that public interest exists.

20 I would like to layout some variance conditions
21 that we are going to recommend that have not been fully
22 flushed out. We may or may not propose making draft language
23 available.

24 First, we recommend that the variance apply to
25 gasoline sulfur use of motor vehicles outside of the

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1 Sacramento Federal RFG area, and outside of the Southern
2 California area, that would consist of Los Angeles, San
3 Bernardino, Ventura, Orange, Riverside, San Diego and
4 Imperial counties.

5 That includes and is somewhat larger than the
6 Federal RFG area in Southern California.

7 As you know, variances that we have issued in the
8 past have provided that once the variance recipient ships a
9 variance gasoline or fuel into the marketplace, that it is
10 lawful for any subsequent distributor to sell that, even
11 though it exceeds the levels.

12 We recommend that that provision be limited on an
13 area basis in the same way that the variance would be limited
14 so that there would be no gasoline allowed to go into the
15 Southern California area or the Sacramento Federal RFG area
16 that is not subject to the full CARB standards.

17 On the other hand, I think we recognize that once a
18 variance gasoline is lawful to get shipped into the
19 marketplace comes into the distribution system, that you have
20 got to have functionality, and it would be inappropriate to
21 try and limit that in any other way.

22 So, we are not going to recommend that, although I
23 think with the limitations, the pipeline would be able to
24 maintain the regular CARB specs in Southern California, and I
25 think we are going to encourage Chevron to do try its

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1 distribution in Northern California outside the common
2 carrier pipeline system, which in case the pipeline could
3 maintain its current CARB spec, which would provide an
4 effective tool in assuring compliance.

5 However, if they have to use that pipeline spec, we
6 recognize the need for functionality in the pipeline, and we
7 assume the pipeline would change the Northern California spec
8 for a limited period of time that we are talking about.

9 We recommend that Chevron be required to continue
10 to make all reasonable efforts to obtain fully complying CARB
11 gasoline. Based on the testimony, it certainly appears that
12 the 15 cent a gallon variance fee provides a small incentive
13 for them to do that.

14 In terms of the comment made by Echelon on
15 rateability, as I indicated before, we recommend that the
16 variance amounts start at 3.5 million barrels, but then it be
17 reduced by a volume equivalent to all of the complying CARB
18 gasoline that they are able to acquire during the variance
19 period, and it be reduced by the volume of complying CARB
20 gasoline that they are able to produce out of the Richmond
21 Refinery over 30,000 barrels a day, because that will be
22 filling, both of those volumes would be filling the needs
23 they have and would be reducing the need for 3.5 million.

24 As I indicated, we recommend the 7.8 RVP throughout
25 this system. I think we will recommend that they make every

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1 effort too that all variance gasoline meet a spec of 300
2 parts per million sulfur.

3 It does not appear that it would be practical to
4 have a direct requirement necessitating that spec for
5 everything, but we are going to recommend that they make all
6 reasonable efforts to maintain 300 parts million and report
7 to us the extent in which they are unable to do so.

8 Finally, with the gasoline coming from the Gulf
9 Coast, it certainly appears that economics will dictate it.
10 They will obtain supplying CARB gasoline to the extent
11 feasible.

12 To the extent they are not, we will make or
13 recommend that they make efforts to obtain Federal RFG from
14 the Gulf Coast and make a demonstration.

15 To the extent that they are not able to do so,
16 similar to what I just described as sulfur --

17 Although, it has not been talked about a lot here,
18 the variance provisions require the pre-payment of the
19 variance fee, so that the variance would be conditioned on
20 Chevron paying to the ARB, pre-paying sums of money that
21 would be greater than any variance gasoline they sell, and
22 they could do that on a periodic basis, and I think the
23 economics are such they will decide what the best periodic
24 basis is given the constraint they will not be allowed to
25 sell variance gasoline if it hasn't been prepaid.

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1 The variances could provide that the ARB would hold
2 those funds in a holding account, and they would be
3 transferred to the High Polluter-High Emitter Fund specified
4 in the statute.

5 Once we have confirmed that variance gasoline
6 covered by the fee has been sold, to the extent that they
7 have prepaid more than the variance gasoline that they
8 ultimately sell, we would remit those funds from the holding
9 account and not send it to the statutory account.

10 HEARING OFFICER VENTURINI: Mr. Jennings, now would
11 another option be to have that go into the escrow account.

12 MR. JENNINGS: I am advised by the ARB
13 Administration Services Division that they could, but it
14 would be practical for it, could be done in the way I
15 described, that way the ARB would always have the money and
16 you would not have an independent escrow being set up.

17 HEARING OFFICER VENTURINI: Okay.

18 MR. JENNINGS: There is going to be a need to track
19 carefully the gasoline that they import and produce under the
20 variance to make sure that the 15 cent a gallon fee is paid
21 for all appropriate gasoline.

22 We may be able to shortly recommend some terms, but
23 I think there also may be a need for the variance to provide
24 that a protocol be established in the next week or so which
25 would with greater specs down and then half of those reports

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1 would be made.

2 One comment that is worth making on the submittal
3 from the Bay Area District, I have not had an opportunity to
4 review it, but it has been pointed out that the 15 cents a
5 gallon variance fee does get paid into the statutory High
6 Emitters Fund, which is supposed to be used for programs
7 which will reduce emissions, and so there could be some
8 mitigation in that regard.

9 HEARING OFFICER VENTURINI: There was an earlier
10 recommendation regarding tiering of the priorities for fuel
11 to ensure that all reasonable steps were taken for the
12 cleanest fuel possible, starting with the CARB, and Mr.
13 Simeroth that was a suggestion?

14 MR. SIMEROTH: Mr. Venturini, I think the spirit of
15 my recommendation was captured in Mr. Jennings'
16 recommendation that the 300 PPM sulfur and the 7.8 RVP is
17 phase one specification that would be the lowest tier, the
18 Federal RFG was clearly identified by Mr. Jennings and that
19 is the only other tier.

20 HEARING OFFICER VENTURINI: I wanted to make sure
21 that staff was still recommending the tiering approach.

22 MR. SIMEROTH: This is a concern, Mr. Venturini,
23 certainly, and I think as Mr. Jennings has described it, it
24 would have that effect.

25 HEARING OFFICER VENTURINI: Thank you. I certainly

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1 recognize I was a little concerned myself how to handle the
2 reporting and so forth.

3 Since my presumption is that you need a decision
4 very soon on this variance.

5 It may be appropriate to require that the time that
6 the protocol to get down to specifics on the reporting to
7 make sure we have some frequency and so forth that would
8 provide us with information that is needed to track this and
9 also the opportunity to get that information.

10 MR. SIMEROTH: Mr. Venturini, with that reporting,
11 I would assume it would also cover the enforcement aspects as
12 was mentioned previously.

13 MR. BEDDOR: We already have a mechanism set up
14 with a lot of refineries, and I assume we might be able to
15 present --

16 HEARING OFFICER VENTURINI: As a model.

17 MR. BEDDOR: Yes.

18 In effect now for people who want the average, they
19 do report batch by batch.

20 MR. FERRELL: Mr. Venturini, we, as matter of
21 current practice report batch by batch all of the
22 requirements, the only change I could see would be the timing
23 in need for the accountants to understand the fees.

24 MR. JENNINGS: Normally this gasoline represents
25 gasoline produced at the Richmond Refinery.

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1 It is not going to be producing at the Richmond
2 Refinery. It is now going to be imported.

3 So, maybe you could speak if you want to now, on
4 the various points that you expected that the gasoline would
5 get to the distribution system.

6 MR. FERRELL: Yes. It would be either the Richmond
7 Refinery or commercial terminals in the Bay Area.

8 In all those cases, we have the reporting
9 requirements that would be met by whatever actions we took.
10 As to the odds, most of it would be complying is virtually
11 all of it.

12 To extent it may not, there could be some variance
13 gasoline brought in, say, into short term, we have to take
14 provisions for that, and that would be introduced into the
15 Kinder-Morgan pipeline, and those are the arrangements we are
16 talking about, would have to be in functionality, and we see
17 the priorities similar.

18 I am putting a lot of things together in the one
19 sentence.

20 But the variance gasoline in the commercial
21 terminal would be not blended by us in the terminal, so it
22 would have a certificate of assurance, whereby when I think
23 we discharged in the terminal blended CARB gasoline it would
24 be on the way into the terminal.

25 MR. JENNINGS: As I understand it, all of the

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1 variance gasoline, certainly most of the gasoline is what you
2 import from out of California, say you would be subject to
3 importer provisions, and we would monitor the gasoline in the
4 same way from when it is shipped from import facility the
5 same as we do under our regulations and protocols that we
6 have entered into on tanker shipments could be applied as
7 well, and that any other product would be produced by
8 Chevron.

9 MR. FERRELL: Yes, and the only complication would
10 be is for the barrels that we buy that have already been
11 loaded by someone else on the ship certifying as a Portland
12 specification gasoline and where we discharge that as
13 variance gasoline in the third party terminal, some change in
14 designation would have to occur.

15 MR. JESSEL: I think what we can agree to is to
16 work with ARB for protocol, make sure all this happens.

17 I think what we are saying is that you probably
18 have the data necessary, but we just need to set up a system.

19 HEARING OFFICER VENTURINI: It may be appropriate
20 to review that to make sure we are satisfied to getting all
21 the information that we need in a timely manner to assure
22 that we are taking all the steps possible to provide the
23 cleanest fuel in Northern California.

24 MR. FERRELL: We can certainly provide that
25 assurance.

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1 MR. JENNINGS: That completes my recommendations.

2 HEARING OFFICER VENTURINI: Thank you very much.

3 Mr. Jessel, I would like to get your reaction to
4 staff's recommendations.

5 MR. JESSEL: My response to the Bay Area Air
6 District proposal, we have had a brief look at it, all of the
7 provisions in it appear to be measures taken in mitigation
8 should we sell non-complying California gasoline in the Bay
9 Area, I guess would be the focus.

10 Our strong belief is that the 15 cent per gallon
11 fee, which in the diesel world was called environmental
12 mitigation fee, really is an environmental mitigation fee
13 because of where it actually ends up in the high polluter
14 retiering count.

15 Chevron has been on the record for an awful long
16 time saying retiering high polluting vehicles is probably the
17 most cost effective way to deal with air quality problems in
18 California.

19 We recognize the only problems in the way are
20 political than anything else, so as much of that money goes
21 to repair high polluters, I think the Bay area actually will
22 come out ahead in terms of emissions.

23 But looking at the individual items here, there is
24 a devil in all kinds of details, some of this thing appears
25 to be very, very difficult for us to accomplish at any time,

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1 let alone be able to agree to something like this under the
2 situation where we are asking for emergency variance.

3 It would take us quite a long time to evaluate each
4 one of these proposals and figure out what the impact on us
5 and whether we think it is really relevant to the proceedings
6 here today.

7 So, my suggestion is that we be sure that the Bay
8 Area Air Quality Management District that the 15 cent per
9 gallon fee which is going to go to repair high polluting
10 vehicles is their reports and mitigation in as much as Bay
11 Area receives a higher proportion of variance gasoline than
12 any other part of the State, I would consider it in their
13 right to ask for a higher proportion of the mitigation fees
14 to be used in their area, and that is obviously up to the
15 State.

16 That is to the response. It does raise another
17 issue, though, and that is Bay Area District gets this in
18 terms of litigation, what about the other districts, how are
19 they then treated?

20 I think setting a precedent where we start dealing
21 with district by district issues in that fashion is really
22 going to stop any kind of proceeding to allow emergency
23 variances to be granted.

24 I think it is actually unwise to even start down at
25 that particular path.

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1 So, that is our basic response to the Bay Area
2 proposal.

3 Now, in terms of the conditions, I think we can
4 dispense with them fairly quickly. I did want to comment on
5 Mr. Beddor's comment, we, too, are very, very concerned that
6 ARB be able to effectively enforce the California rules, that
7 is to Chevron's benefit as well as to the State, so we will
8 cooperate in every way possible to make an enforcement of
9 those rules as easy as possible under these circumstances.

10 Having said that, I think we can accept all the
11 conditions as outlined by Mr. Jennings, subject, of course,
12 to review of the detail of it.

13 If we are about done, I have a short closing
14 statement.

15 HEARING OFFICER VENTURINI: Go ahead.

16 MR. JESSEL: Okay.

17 We think you do have a complete record for a
18 decision now. We think we have put everything on the record
19 that you need to make the decision, and I think staff appears
20 to support that.

21 We don't think you need any further hearings. You
22 don't need to take any more comments. You don't need any
23 more proceedings.

24 We suggest you close the record so we can get on
25 with serving our customers.

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1 After all, part of the hardship that consumers and
2 Chevron in particular is experiencing right now is
3 uncertainty, and as soon as we have certainty, then the
4 sizeable piece of that hardship goes away.

5 With all that said to request a prompt decision as
6 quickly as possible, tomorrow, tonight, whenever you can pull
7 it together, we are at the other end of the phone, and I
8 appreciate all the efforts that ARB has made to put this
9 together in such short notice and in responding to the
10 situation in which we are hoping this action will keep from
11 becoming critical.

12 HEARING OFFICER VENTURINI: Thank you very much.

13 At this point, I do want to close the record.

14 MR. WALKER: I just want to state for the record,
15 these comments were distributed, our public commentary was
16 closed prior to these being distributed, and the comments
17 from Bay Area Air Quality Management District, particularly 2
18 and 4 and number 10 could adversely affect dealers.

19 This comes at dealers expenses, not the question,
20 and we are very concerned about any attention given to these
21 at this time.

22 We agreed that the 15 cents would provide proper
23 mitigation.

24 HEARING OFFICER VENTURINI: Thank you.

25 Now, I will close the record on this hearing. I

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1 will consider today's testimony and the written record. I
2 will make a recommendation to the Executive Officer, and I
3 appreciate that time is of the essence here.

4 What I intend to do is ask staff to draft the
5 Executive Order based upon my recommendation to the Executive
6 Officer and his decision. I would like to make a draft of
7 that available to Chevron not for the purpose of changing it
8 but just to make sure that you understand the language so
9 that it is clear what we are saying so there is no
10 interpretation problems.

11 As soon as that decision is made, we will notify
12 you verbally, and then we will follow up with the written
13 order in a very timely manner.

14 With that, I would like to thank everyone here at
15 the table, all of those people around the room and those that
16 are on the telephone for participation, and hopefully, we do
17 not have to do this again.

18 Thank you all very much.

19 (Thereupon the hearing was adjourned
20 at 6:00 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, VICKI L. OGELVIE, a Certified Shorthand
Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the
foregoing hearing was reported in shorthand by me, Vicki L.
Ogelvie, a Certified Shorthand Reporter of the State of
California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said hearing nor in any
way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand
this nineteenth day of July, 1999.

VICKI L. OGELVIE
Certified Shorthand Reporter
License No. 7871

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